

# GAO REPORT ON EL SALVADOR

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HEARING  
BEFORE A  
SUBCOMMITTEE OF THE  
COMMITTEE ON APPROPRIATIONS  
UNITED STATES SENATE  
ONE HUNDRED FIRST CONGRESS  
FIRST SESSION  
SPECIAL HEARING

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# GAO REPORT ON EL SALVADOR

THURSDAY, JUNE 8, 1989

U.S. SENATE,  
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,  
Washington, DC.

The subcommittee met at 2:10 p.m., in room SD-138, Dirksen Senate Office Building, Hon. Patrick J. Leahy (chairman) presiding.

Present: Senators Leahy, Harkin, and Hatfield.

## GENERAL ACCOUNTING OFFICE

NATIONAL SECURITY AND INTERNATIONAL AFFAIRS DIVISION

STATEMENT OF FRANK C. CONAHAN, ASSISTANT COMPTROLLER GENERAL

## DEPARTMENT OF STATE

CENTRAL AMERICAN AFFAIRS

STATEMENT OF MICHAEL KOZAK, ACTING ASSISTANT SECRETARY OF STATE

## DEFENSE AGENCIES

DEFENSE SECURITY ASSISTANCE AGENCY

STATEMENT OF H. DEIHL McKALIP, DIRECTOR OF OPERATIONS

### OPENING STATEMENT OF SENATOR LEAHY

Senator LEAHY. Good afternoon. This hearing is to hear testimony about a General Accounting Office investigation into claimed misuse of military aid to the Government of El Salvador.

That investigation was requested by Senator Harkin, who has been particularly concerned, as I have, about the whole question of accountability for the huge amount of aid we send to El Salvador.

As you know, El Salvador is one of the top four recipients of United States aid. We all know there is plenty of reason to be concerned about what happens to the money sent down there.

One of the main responsibilities of this subcommittee is to try to see how money we appropriate is used. We can assure ourselves and assure the American taxpayers that it is being spent for the purposes intended and is used as effectively as possible.



If the GAO report which we have received is accurate, and I see no reason to believe otherwise—then there certainly has been serious abuse in the Military Assistance Program in El Salvador.

At a minimum, \$100,000 in U.S. military assistance was diverted through the Salvadoran military to buy aviation fuel for the illegal Contra resupply operation run by Colonel Oliver North, Felix Rodriguez, and associates at Ilopango Airport.

Aside from that whole issue, the subcommittee needs to know what happened; how it could happen despite all our laws and regulations which are pretty extensive in this area; why it has taken this long to uncover; and what is being done to prevent such abuse from occurring again in El Salvador and elsewhere.

There are still a lot of unanswered questions arising from this investigation. One of the most important for the subcommittee, of course, is what happened to over \$680,000 in cash paid to the Salvadoran Air Force at Ilopango by U.S. Government planes refueling with MAP fuel and by pilots of Southern Air Transport engaged in charter flights for the U.S. Government.

The State Department, the Defense Department and others are used to spending billions of dollars—by necessity, I might add. To most, \$680,000 in missing money and probably another \$100,000 diverted without our consent may really seem like very little money. In my home State of Vermont it is still a lot of money. I suspect it is in the home States of most of—in fact all of the members here.

We are concerned that people are playing fast and loose with it. With the billions of dollars we spend in El Salvador, if it turns out that the only amount that we cannot track is about three-quarters of a million dollars, I suppose in some ways we should breathe a sigh of relief and, in fact, I probably would.

But what I am concerned about, however, is when we are spending money at one of the highest rates anywhere in our foreign aid, is this just the tip of the iceberg? Are there other problems like this? Is it only \$750,000 or do we have a systemic problem here where it could be many, many times that, and that is where we have to show our own oversight.

So, who got the money? What did they do with it?

The head of the Salvadoran Air Force—a man who I understand is being touted as the next chief of staff of the Salvadoran armed forces—has refused to provide information to GAO investigators, even to allow them to audit Salvadoran Air Force accounts and locate the money. In fact, he told the GAO investigators to take a hike.

Well, I cannot accept that attitude. The U.S. Government remains responsible to the American people for how their money is used even when we send it abroad. We do not give military assistance without strings attached. We retain controls and rights over that money, even after it goes to foreign governments. We also have the responsibility to worry about the propriety of U.S. Air Force planes paying a foreign government to use fuel in 1988, that was provided by U.S. military assistance in 1987.

DSAA at last insisted that payments to the Salvadoran Air Force be deposited in a special FMS account. Even after that happened, some money paid to the Salvadoran Air Force by Southern Air Transport pilots still went directly to Salvadorans in cash.

It almost looks like the Salvadoran Air Force got a double hit with our Military Assistance Program. They got aviation fuel for free under the MAP program, some of which they then sold back to us for dollars. Not a bad deal for them, but a little bit nutty for us.

I want to learn today how much money remains unaccounted for in El Salvador under this program and what information we can give GAO to find out what was done with it.

So we have with us today Mr. Frank Conahan, the Assistant Comptroller General of the General Accounting Office, Mr. Mike Kozak, the Acting Assistant Secretary of State for Central American Affairs and Mr. Deihl McKalip, Director of Operations at the Defense Security Assistance Agency. So, maybe, Mr. Conahan, if you could give us kind of a brief synopsis first, although I would yield first to Senator Harkin if he wishes to say something.

But I want to emphasize one thing. I have no question in my mind, that the amount of money we are talking about is a relatively small amount compared to the overall amount sent down to El Salvador. What I am concerned about is what happens when this problem gets compounded when more assistance is sent down. There is a request for a great deal more money for El Salvador this year. I am not at all convinced this committee is going to be able to find that amount of money for them, but there is a request for a great deal more money.

I intend for this subcommittee to follow where the money goes whether it is El Salvador or any other country. And if we find things that raise a red flag—and this sure raises a big red flag in my mind—we are going to track it down.

Senator Harkin.

#### PREPARED STATEMENTS

Senator HARKIN. Thank you very much, Mr. Chairman. I want to associate myself with your opening comments. I ask unanimous consent that my opening statement be made a part of the record, and I will just say a couple of things.

Senator LEAHY. Without objection. And I might add that I will leave the record open for the prepared remarks of the subcommittee members and today's witnesses.

[The statements follows:]

#### PREPARED STATEMENT OF SENATOR TOM HARKIN

Mr. Chairman, I would like to begin by commending you for holding today's hearing on the GAO investigation into allegation of illegal transfers by the Salvadoran Air Force of U.S.-Map fuel to the Contra supply operation. I also commend Senator Hatfield, who as chairman of the Arms Control and Foreign Policy Caucus, made the first inquiries into the issue in July 1987.

The GAO findings should disturb every member of this subcommittee who have a responsibility for oversight over the U.S. foreign aid program.

What's at issue here is the violation of law and the question of accountability.

Was the Salvadoran Air Force accountable to the U.S. Government about the use of fuel purchased with U.S. military assistance funds?

Was the U.S. Embassy in El Salvador accountable to the American people, whose taxes paid for the fuel by the Salvadoran Air Force?

Was the Department of State accountable to the Congress, which for the past two years has asked the Department to investigate allegations of this transfer?

Were the Salvadoran Air Force and the U.S. Embassy accountable to the law?

Based on this report, the answer to each of these questions is a resounding no. The Salvadoran Air Force received more than \$100,000 from the Contra supply network from the sale of fuel purchased with U.S. foreign aid funds, plus pocketed another \$700,000 from the U.S. Government and its subcontractors.

Equally disturbing, the U.S. Government has shown no interest in uncovering this illegal transfer. The Congress deserves better. The Salvadorans—the intended beneficiaries of the U.S. aid program—deserve better. The American taxpayers deserve better.

The GAO found some startling information that warrants today's special hearing.

It uncovered the first documented case of a transfer of U.S. foreign aid dollars to the Contra supply network that operated from 1985 to 1986 at a time when direct and indirect U.S. aid for Contra military operations was prohibited by law.

The GAO found that the Salvadoran Air Force received \$800,000 in cash for fuel it received free under the U.S. foreign aid program.

And it advised the State Department to determine whether the Salvadoran Air Force engaged in a substantial violation of U.S. law.

Today's hearing will raise—if not totally answer—a number of important questions.

What happened to the \$800,000, and what has the U.S. Government done to recover it?

What sanctions does the U.S. Government intend to impose on the Salvadoran Air Force for these transgressions?

Were U.S. Government personnel involved in—did they authorize, were they aware of—these illegal transfers?

For nearly two years, beginning with my November 1987 letter to Secretary Shultz, I have tried to find the truth behind allegations of these illegal transfers.

I thank the GAO and this subcommittee for helping the American people uncover the truth behind these allegations so we can work to put to rest this sordid chapter in recent American history.

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#### PREPARED STATEMENT OF SENATOR ALFONSE D'AMATO

Thank you, Mr. Chairman. The GAO has shown its usual diligence in unmasking the illegal transfer of MAP-funded aviation fuel to the Contras. Obviously, we cannot sanction such misuse of government funds. Before we leap to condemn those involved, however, we should review the circumstances that prompted this diversion.

The real issue here is support for the Contras. Our Government financed and trained the Contras in pursuit of the goal of a democratic Nicaragua. To those who believed in that cause, the intervention of Congress, and the tendency of Congress to wax and wane in its support for the Contras, was maddening. During those times when the Contras, in the field, fighting our enemies, were left in the lurch by congressional indecision, efforts were made to provide the Contras with the wherewithal to survive. It is easy now to deplore the activities of Colonel North and others, but let's not forget that the Congress created the environment in which such activities in support of the Contras appeared the only option.

Thank you, Mr. Chairman.

Senator HARKIN. First, I thank the GAO. We will hear that the GAO has uncovered the first documented case of a transfer of U.S. foreign aid dollars to the Contra supply network that operated from 1985 through 1986, at a time when direct and indirect U.S. aid for Contra military operations was prohibited by law. This is a violation of law. Second, the GAO found that the Salvadoran Air Force received slightly over \$800,000 in cash, for fuel it received free under the U.S. foreign aid program.

At today's hearing we will raise a number of important questions. What happened to the \$800,000? And what is the U.S. Government doing to get it back? What sanctions does the U.S. Government intend to impose on the Salvadoran Air Force for these transgressions? Were U.S. Government personnel involved in, authorized, aware of the illegal transfers, and if so, who are they? Thank you very much, Mr. Chairman.

## STATEMENT OF FRANK C. CONAHAN

Senator LEAHY. Thank you, Senator Harkin. Mr. Conahan, if you want to start, the floor is yours.

Mr. CONAHAN. Thank you, Mr. Chairman. I do have a full statement that I would like to submit for the record, and then perhaps I can just cover some of the points that both you and Senator Harkin hit the high points of.

I might start by saying that the United States began providing MAP-funded commercial jet fuel to the Salvadoran Air Force in August 1985 and began supplying aviation gas in August 1986. Before then the Salvadoran Ministry of Defense had purchased fuel with Salvadoran national defense funds.

Eventually, the MAP-funded fuel replaced the fuel funded by the ministry so that by late August 1985 all commercial jet fuel at Ilopango on the military side of Ilopango had been purchased with MAP funds, and by late August 1986, all aviation gas had been purchased with MAP funds.

As you mentioned, Mr. Chairman in 1985 and in 1986 Lieutenant Colonel North and others were involved in establishing a supply operation to air drop supplies to the Contra forces inside Nicaragua. Their organization, as we all know, was called the Enterprise.

At the Lieutenant Colonel's request in September 1985, Mr. Felix Rodriguez, a private individual supporting the Contra supply operation, arranged with the Salvadoran Air Force commander for Enterprise air crews to operate at Ilopango.

Mr. Rodriguez told us that after the operation began, the commander provided base access and maintenance support to the Enterprise crews and permitted them and Southern Air pilots on charter flights for the Enterprise to refuel aircraft at the base.

Senator HARKIN. Excuse me. Can you identify who the commander was.

Mr. CONAHAN. It is Commander Bustillo of the Salvadoran Air Force.

The Enterprise air crews began arriving at Ilopango in February 1986 and conducted air drops in Nicaragua from March to October. Southern Air pilots and charter flights for the pilots landed at the base in April and May 1986 to deliver munitions from Europe, air drop supplies to the Contras, and transport Enterprise personnel.

According to Mr. Rodriguez, he acted alone in arranging for the air crews and others to operate at Ilopango. He said that no one, including the MILGROUP officials stationed in El Salvador at the time, were involved.

We interviewed the then-head of the MILGROUP in El Salvador and the head of the Air Force section. They told us that they were aware, certainly, that crews were operating, that they observed the refuelings, but they had no role in arranging any of the services to include specifically refueling privileges.

They emphasized that they did not know that the refuelings involved MAP-funded fuel.

Senator HARKIN. Mr. Chairman, is it all right to interrupt just a second?

Senator LEAHY. Of course.

Senator HARKIN. You questioned Colonel Steele?



Mr. CONAHAN. Colonel Steele and Lieutenant Colonel Rankin.

Senator HARKIN. That would be the head of the MILGROUPE and his assistant?

Mr. CONAHAN. Well, Lieutenant Colonel Rankin was the head of the Air Force section of the MILGROUPE.

Senator HARKIN. And you said that they were aware that refuelings were going on?

Mr. CONAHAN. Yes, sir.

Senator HARKIN. But they had no part in it. How did you phrase that again?

Mr. CONAHAN. They told us that they were not involved in arranging for any of the services provided by the Salvadoran Air Force to include specifically the refueling.

Senator HARKIN. Were they aware at the time that all of the fuel on the base was, in fact, MAP fuel?

Mr. CONAHAN. We asked that question of both of them. They said that they were not aware that all of the fuel was MAP-funded fuel, that, in fact, it just had not occurred to them.

Senator HARKIN. Were they not in charge of that?

Mr. CONAHAN. They certainly were in charge of it. They signed receipts. Members of the organization signed receipts for the fuel.

Senator HARKIN. Who would have signed those receipts?

Mr. CONAHAN. Well, the receipts were signed by the master sergeant who worked for Lieutenant Colonel Rankin, and on some occasions Lieutenant Colonel Rankin himself signed these receipts.

Senator HARKIN. But he claimed he did not know it was MAP fuel?

Mr. CONAHAN. He claimed he did not know that the fuel that was being used to refuel the Contra supply operation aircraft was MAP fuel.

Senator HARKIN. But after a certain point it was all MAP fuel?

Mr. CONAHAN. That is correct.

Senator HARKIN. After what point, again, was that?

Mr. CONAHAN. For the commercial jet fuel it was a date in August 1985, and for the aviation gas it was a date in August 1986.

Senator HARKIN. Thank you.

Mr. CONAHAN. According to the Salvadoran Air Force and Southern Air records, the Enterprise air crews and Southern Air pilots on charter flights for the Enterprise purchased fuel on at least 63 occasions during 1986. On 32 occasions these purchases involved MAP-funded fuel.

This covered the period from June through October, I believe. We did not have good information for the earlier months of that year.

The Salvadoran Air Force received cash payments of \$109,335 in U.S. dollars for the fuel sold. According to Mr. Rodriguez, he established a cash fund with funds provided by Second associates to pay in advance for air crew purchases of aviation gas.

According to Southern Air officials, their pilots paid cash for commercial jet fuel before each refueling. The Salvadoran Air Force also transferred MAP-funded fuel to parties at Ilopango other than those involved in the Contra supply operation.

We were unable to identify the number of refuelings, the type and quantity of fuel, or payments for these transfers because the

Salvadoran Air Force commander would not discuss specific details.

He did make reference to the fact that he permitted private aircraft involved in some earthquake operations in October 1986 to refuel.

He also made reference to a December 1988 refueling of a Mexican Government airplane which was transporting the then-President of El Salvador.

In 1987, Mr. Chairman, Senator Harkin and the Arms Control and Foreign Policy Caucus asked the State Department to investigate the allegations that the MAP funded AVGAS was transferred to the Contra supply operation at Ilopango.

The Defense Security Assistance Agency and the Embassy and the MILGROUP in El Salvador assisted the State Department.

The investigation focused only on AVGAS because no other type of fuel was alleged at that time to have been transferred.

The MILGROUP reported that aviation gas was available from both the military and civilian sides of the base and that the delivery rates for 1986 and 1987 for MAP-funded fuel were similar.

Because State, DSAA, and MILGROUP officials had no evidence, direct evidence, no evidence at all that the air crews refueled aircraft with AVGAS and for the other reasons I just stated, they concluded that no significant diversion to other users.

State reported this information to Senator Harkin in February 1988 and to the caucus in June 1988.

During the State investigation no one with direct knowledge of the supply operation was questioned about refueling activities at Ilopango.

If the officials had questioned the air crews, the former MILGROUP people, or the Salvadoran Air Force commander about refueling activities, they could have determined that air crews had, in fact, refueled as we determined.

They then could have pursued the investigation and come up with the kind of information that we are presenting to the committee here today.

We found no evidence that the Salvadoran Government requested or obtained U.S. consent for the Salvadoran Air Force to transfer MAP-funded fuel to any third parties.

Let me turn now to the Arms Export Control Act. It requires the President to report to the Congress any unauthorized third party transfers as well as transfers that may have constituted what the law refers to as substantial violations of foreign military sales agreements.

A violation may be substantial based upon either the quantities or gravity of the consequences involved. These reporting responsibilities have been delegated to the Secretary of State.

We have informed State of the transfers to the MAP-funded fuel to the Contra supply operation as well as to other third parties.

The transfer to the Contra supply operation and other third parties violated their sales agreements between United States and Salvadoran Governments in effect during 1986 and 1988.

We have not been able to establish anything with respect to 1987. We just have not found anything for that particular year.



We have recommended that the State Department report these transfers to the Congress as required by the Arms Export Control Act.

We believe that the transfer of fuel to the Contra supply operation may have also constituted a substantial violation of the 1986 sales agreement because it occurred when the U.S. Government was prohibited by the fiscal year 1986-87 foreign assistance authorization from using funds to support military or paramilitary operations of the Contras.

The U.S. Government could not have legally approved the transfer even if the Salvadoran Government had requested the transfer because the Arms Export Control Act states that the President shall not give consent unless the United States itself would make the transfer.

The fiscal year 1986-87 authorization as I mentioned, would have prevented the United States from transferring MAP-funded fuel to the Contra supply operation.

Let me just say a word about the transfers to the U.S. Government. We found that the Salvadoran Air Force had transferred MAP-funded fuel to the U.S. Government to refuel U.S. military aircraft delivering MAP items and providing transport service, and to refuel Southern Air Transport aircraft on contract flights for the Military Airlift Command to deliver cargo and for the State Department to deliver humanitarian assistance to the Contras.

State and DSAA believe that transfers of MAP-funded fuel to refuel U.S. military and Contract aircraft are not third party transfers because the parties involved are, indeed, the U.S. Government itself. We believe that that position is reasonable.

Senator LEAHY. You believe that position is?

Mr. CONAHAN. We believe that position is reasonable, yes, sir. We do have a concern about the payments, the payments for the fuel sold to refuel U.S. military aircraft and the Southern Air Transport aircraft on Contract flights were initially made directly to the Salvadoran Air Force.

DSAA and the MILGROUP officials became concerned with the propriety of making direct payments by the United States to the Air Force and instituted a procedure in April 1987 to have proceeds for fuel sold to refuel United States military aircraft deposited into the FMS trust fund for use by El Salvador in procuring further defense items and services.

DSAA and the MILGROUP told us that they did not know that the Southern Air pilots paid the Salvadoran Air Force directly and, therefore, did not consider these payments when implementing the credit system in April 1987.

When we brought this to their attention in early 1989, they informed the Salvadoran Air Force commander that cash payments for fuel are prohibited.

I think there was one further cash payment after that occurred. I do not have any further information on that, but as of April 1989, Southern Air Transport told us that company pilots no longer purchase fuel at Ilopango.

We are concerned that other countries can generate cash from items such as was done in El Salvador without any controls.

We believe that recipient countries should use the proceeds from the sale of MAP-funded items procured through the FMS program only to finance additional defense-related purchases, and we have made a recommendation to that effect to DSAA.

That summarizes our report, Mr. Chairman.

PREPARED STATEMENTS

SENATOR LEAHY. At this point I would ask that the prepared statements of all three witnesses be included in the record so that we can proceed with questions.

[The statements follow:]

## STATEMENT OF FRANK C. CONAHAN

I am pleased to be here today to discuss our review of transfers of fuels purchased for El Salvador with U.S. Military Assistance Program (MAP) funds. At Senator Harkin's request, we investigated allegations that MAP-funded fuel supplied to the Salvadoran Air Force had been improperly transferred to air crews involved in a supply operation supporting Nicaraguan Democratic Resistance forces, or Contras. We found that such transfers did occur. We also found that transfers of MAP-funded fuel to other third parties occurred.

These transfers violated agreements between the United States and El Salvador stipulating that title or possession of U.S. supplied defense items or services cannot be transferred without prior U.S. government consent. We found no evidence that such consent was sought or obtained.

I will also discuss our review of the State Department's earlier efforts to investigate allegations of MAP-funded fuel transfers in El Salvador. And finally I will discuss transfers of MAP-funded fuel to the U.S. government.

DELIVERY OF MAP-FUNDED FUEL

As of November 1988, the United States had spent \$21.1 million in MAP grant funds to purchase fuel, including \$12.7 million for commercial jet (COMJET) fuel and aviation gas (AVGAS) supplied to the Salvadoran Air Force at Ilopango Air Base. The remaining \$8.4 million was for diesel fuel supplied to the Salvadoran Army. The U.S. government has contracted with Exxon International Company to supply MAP-funded fuel to the Salvadoran military since funding became available in 1985.

The United States began providing MAP-funded COMJET fuel to the Salvadoran Air Force at Ilopango in August 1985 and MAP-funded

AVGAS in August 1986. Before then, the Salvadoran Ministry of Defense had purchased COMJET and AVGAS with Salvadoran national defense funds. Eventually MAP-funded fuel replaced the fuel funded by the Ministry. By late August 1985, all COMJET fuel at Ilopango had been purchased with MAP funds, and by late August 1986, all AVGAS had been purchased with MAP funds.

#### TRANSFERS TO THE CONTRA SUPPLY OPERATION

As you know, Lieutenant Colonel Oliver North and others were involved in establishing a supply operation to air drop supplies to Contra forces inside Nicaragua. At Lt. Col. North's request in the summer of 1985, Major General Richard Secord (ret.) and his associates set up an organization called Enterprise; purchased aircraft and hired air crews; purchased weapons and ammunition in Europe; and chartered aircraft from Southern Air Transport, a U.S. company.

#### Use of Ilopango Air Base

At Lt. Col. North's request in September 1985, Mr. Felix Rodriguez, a private individual supporting the Contra supply operation, arranged with the Salvadoran Air Force Commander for Enterprise air crews to operate at Ilopango. According to Mr. Rodriguez, the Commander agreed to provide service space and supported the supply operation as it expanded to include Southern Air Transport aircraft. Mr. Rodriguez told us that after the operation began, the Commander provided base access passes and maintenance support to the Enterprise air crews and permitted them and Southern Air pilots on charter flights for Enterprise to refuel aircraft at the base.

The Enterprise air crews began arriving at Ilopango in February 1986 and conducted air drops in Nicaragua from March to October. Southern Air pilots on charter flights for the Enterprise landed at the base in April and May 1986 to deliver munitions from Europe,



air drop supplies to the Contras and transport Enterprise personnel.

According to Mr. Rodriguez, he acted alone in arranging for the air crews and others to operate at Ilopango. He stated that no one else, including officials assigned to the U.S. Military Group (MILGROUP) at the Embassy in San Salvador, was involved. We interviewed Colonel James Steele and Lieutenant Colonel David Rankin, the U.S. officials who served as MILGROUP Commander and Chief of the MILGROUP Air Force section during 1986, respectively. These officials stated that they were aware that the air crews and others operated at Ilopango, but that they had no role in arranging for the use of base facilities or refueling privileges.

Although we attempted to verify the information provided by Mr. Rodriguez and former MILGROUP officials with the Salvadoran Air Force Commander, he would not comment on any aspect of the Contra supply operation, including whether or not he believed it was an official U.S. government activity. The Commander said that Salvadoran national security interests prevented him from discussing the subject. We did not find any evidence that the former MILGROUP personnel were involved in arranging for the use of facilities at Ilopango or for refueling privileges.

#### Transfers of MAP-Funded Fuel

According to Salvadoran Air Force and Southern Air records, the Enterprise air crews and Southern Air pilots on charter flights for Enterprise purchased fuel on at least 63 occasions during 1986. On 32 occasions, these purchases involved MAP-funded fuel. From April to September 1986, the Salvadoran Air Force sold 61,107 gallons of MAP-funded fuel to the Contra supply operation, including 24,310 gallons of AVGAS to the Enterprise air crews and 36,797 gallons of COMJET fuel to Southern Air pilots.

The Salvadoran Air Force received cash payments of \$109,335 in U.S. dollars for the fuel sold. According to Mr. Rodriguez, he

established a cash fund, with funds provided by Secord associates, to pay in advance for air crew purchases of AVGAS. According to Southern Air officials, their pilots paid cash for CONJET fuel before each refueling.

We found no evidence that the Salvadoran government requested or obtained U.S. consent for the Salvadoran Air Force to transfer MAP-funded fuel to the Contra supply operation. Colonel Steele and Lt. Colonel Rankin stated that they were aware that parties involved in the operation refueled at Ilopango, but that they did not know the refuelings involved MAP-funded fuel. They also stated that they never received a request from any party for consent to transfer MAP-funded fuel nor did they approve the transfer.

According to Colonel Steele and Lt. Colonel Rankin, they did not know that the Salvadoran Air Force tanks contained only MAP-funded fuel and that the possibility of a transfer of MAP-funded fuel did not occur to them. Colonel Steele told us that he periodically told Salvadoran military officials, including the Salvadoran Air Force Commander, to ensure that MAP-funded items were not transferred to the Contras because such a transfer could jeopardize future MAP funding.

#### TRANSFERS TO OTHER THIRD PARTIES

The Salvadoran Air Force also transferred MAP-funded fuel to parties at Ilopango other than those involved in the Contra supply operation. The Salvadoran Air Force Commander stated that he authorized the transfer of MAP-funded fuel to refuel privately owned aircraft involved in earthquake relief efforts in October 1986 and to refuel a Mexican government aircraft on official business in December 1988. We were unable to identify the number of refuelings, type and quantity of fuel, or payments for these transfers because the Salvadoran Air Force Commander would not discuss specific details.

We just recently learned that three Southern Air Transport flights initially believed to have involved other third party transfers actually involved one flight in support of the Contra supply operation and the other two were U.S. government contract flights.

#### STATE DEPARTMENT INVESTIGATION

In 1987, Senator Harkin and the Arms Control and Foreign Policy Caucus asked the State Department to investigate the allegations that MAP-funded AVGAS was transferred to the Contra supply operation at Ilopango. The Defense Security Assistance Agency (DSAA) and Embassy in San Salvador assisted the State Department in its investigation. The investigation focused only on AVGAS because no other type of fuel was alleged to have been transferred.

In late 1987, the Embassy staff reported that they believed that the only source of AVGAS at Ilopango during the time of the alleged transfers was MAP-funded fuel in the Salvadoran Air Force tank. However, they did not consult with current MILGROUP officials to confirm this information. State Department officials concluded that MAP-funded fuel had possibly been transferred to the air crews and drafted a letter to Senator Harkin in January 1988 stating that a "technical violation" of the third-party transfer restriction may have occurred. State sent a copy to DSAA for comment.

DSAA officials were concerned about the accuracy of the draft response and asked current MILGROUP officials to confirm the number of AVGAS sources at Ilopango and obtain delivery rates of MAP-funded AVGAS for 1986 and 1987. In late January 1988, the MILGROUP reported that AVGAS was available from both the military and civilian sides of the base and that the delivery rates for 1986 and 1987 were similar. Because State, DSAA and MILGROUP officials had no evidence that the air crews refueled aircraft with AVGAS from the military side and believed that delivery rates showed a consistent pattern of consumption, they concluded that no significant diversion to other users had occurred. State reported

this information to Senator Harkin in February 1988 and to the Caucus in June 1988.

During the State investigation, no one with direct knowledge of the supply operation was questioned about refueling activities at Ilopango. Since State, DSAA and MILGROUP officials investigating the matter had found no evidence of a transfer and considered the allegations to be general in nature, they believed further questioning was unwarranted. However, if the officials had questioned the air crews, former MILGROUP officials, and the Salvadoran Air Force Commander about refueling activities, they could have determined that the air crews refueled from the Salvadoran Air Force side of the base in August and September 1986. They could have then examined data on deliveries of MAP-funded AVGAS and confirmed that the air crews refueled when the Salvadoran Air Force AVGAS tank contained only MAP-funded fuel.

#### RESTRICTIONS ON TRANSFERS

In fiscal year 1982, MAP grant funds were merged into the Foreign Military Sales (FMS) trust fund account. Items and services purchased with these funds, including fuel supplied to the Salvadoran military, are procured through the FMS program and are subject to restrictions under the Arms Export Control Act. The act provides that the President cannot sell defense items or services unless the recipient country has agreed not to transfer title or possession without prior U.S. government consent. The Salvadoran government was bound by that restriction through FMS agreements it signed with the U.S. government concerning MAP-funded fuel.

We found no evidence that the Salvadoran government requested or obtained U.S. consent for the Salvadoran Air Force to transfer MAP-funded fuel to any third parties. Because the Salvadoran Air Force Commander apparently authorizes transfers of MAP-funded fuel at his own discretion, we believe greater control is required. DSAA officials agree and at their request, the State Department has

tasked the Embassy to draft an agreement with the Salvadoran government establishing additional guidelines for the use of MAP-funded fuel and granting U.S. consent only for certain third-party transfers.

#### REPORTING THIRD-PARTY TRANSFERS TO CONGRESS

The Arms Export Control Act requires the President to report to the Congress any unauthorized third-party transfers, as well as transfers that may have constituted "substantial" violations of FMS sales agreements. A violation may be substantial based on either the quantities or gravity of the consequences involved. These reporting responsibilities have been delegated to the Secretary of State. In January 1989, we informed State of the transfers of MAP-funded AVGAS to the Contra supply operation and of the transfers to other third parties. We subsequently confirmed the transfers of MAP-funded COMJET to the Contra supply operation and informed State of these transfers in March 1989.

#### Violations of Sales Agreements

The transfers of MAP-funded fuel to the Contra supply operation and other third parties violated FMS sales agreements between the U.S. and Salvadoran governments in effect during 1986 and 1988. We have recommended that the Secretary of State report these transfers as violations of these agreements under the act. We understand that the Secretary plans to report the transfers involving the Contra supply operation.

We believe that the transfer of fuel to the Contra supply operation may have constituted a substantial violation of the 1986 sales agreement because it occurred when the U.S. government was prohibited by the fiscal year 1986-87 Foreign Assistance Authorization, PL 99-83, from using MAP funds to support military or paramilitary operations of the Contras. The U.S. government could not have legally approved the transfer even if the Salvadoran government had requested consent because the Arms Export Control



Act states that the President shall not give consent unless the United States itself would make the transfer. The Foreign Assistance Authorization would have prevented the United States from transferring MAP-funded fuel to the Contra supply operation.

We have recommended that the Secretary of State determine whether the transfer to the Contra supply operation may have constituted a substantial violation and if so, report it to the Congress as such.

#### TRANSFERS TO THE U.S. GOVERNMENT

During our review, we also found that the Salvadoran Air Force has transferred MAP-funded fuel to the U.S. government to refuel U.S. military aircraft delivering MAP items and providing transport service, and Southern Air Transport aircraft on contract flights for the Military Airlift Command to deliver cargo and for the State Department to deliver humanitarian aid to the Contras. These transfers involved the sale of at least 942,509 gallons of MAP-funded COMJET fuel from August 1985 to October 1988. We could not determine the exact total because data on sales during certain time periods in 1985, 1986 and 1987 were not complete.

State and DSAA believe that transfers of MAP-funded fuel to refuel U.S. military and contract aircraft are not third party transfers because the parties involved are U.S. government entities and the U.S. government originally provided the MAP-funded fuel. We believe this position is reasonable.

#### Payment Procedures

Payments for MAP-funded fuel sold to refuel U.S. military aircraft and Southern Air Transport aircraft on contract flights were either made directly to the Salvadoran Air Force or credited to the FMS trust fund. Total direct payments equaled \$691,732 including the local currency (colon) equivalent of \$390,213 in U.S. Treasury checks issued by the U.S. Embassy to pay for MAP-funded fuel sold to refuel U.S. military aircraft from August 1985 to April 1987.

The remaining \$301,519 consisted of cash payments in U.S. dollars by Southern Air pilots from March 1986 to October 1988.

DSAA and MILGROUP officials became concerned about the propriety of direct payments to the Salvadoran Air Force and lack of U.S. government control over use of the monies, and implemented a credit system in April 1987 to pay for fuel sold to refuel U.S. military aircraft. This system resulted in crediting payments to a holding account for El Salvador in the FMS trust fund, used to finance purchases of defense items and services for the Salvadoran military. As of September 1988, credited payments totaled \$805,795.

DSAA and MILGROUP officials stated they did not know that Southern Air pilots paid the Salvadoran Air Force directly and therefore did not consider these payments when implementing the credit system in April 1987. Consequently, Southern Air pilots continued to pay cash when refueling at Ilopango. In early 1989, MILGROUP officials informed the Salvadoran Air Force Commander that cash payments for fuel are prohibited. Southern Air Transport officials told us that, as of April 1989, company pilots no longer purchase fuel at Ilopango.

#### Use of Payments

According to the Salvadoran Air Force Commander, he used the proceeds from the sale of MAP-funded fuel to pay for construction of facilities at Ilopango and other operational requirements. The U.S. official serving as MILGROUP commander during 1987 stated that he reviewed Salvadoran Air Force expenditure records in April 1987, at the invitation of the Salvadoran Air Force Commander. He told us that the records showed that sale proceeds had been spent for construction of facilities, spare parts and other defense-related requirements. He did not verify the accuracy of this information.

According to DSAA, recipient countries are entitled to keep the

proceeds from sales of defense items procured through the FMS program, including those funded with MAP grant financing. Because the United States does not retain rights to the title, countries are not required to return items when no longer needed, or the proceeds if they are sold.

We are concerned that countries can generate cash from MAP-funded items without any expenditure controls. We believe that recipient countries should use proceeds from the sale of MAP-funded items procured through the FMS program only to finance additional defense-related purchases. We have recommended that DSAA amend the standard FMS sales agreement to include a provision requiring proceeds from the sale of MAP-funded items to be returned to the FMS trust fund account of the recipient country.

This concludes my statement. The information I have presented is based on our review of data on fuel deliveries and purchases at Ilopango and interviews with State Department and DSAA officials, U.S. Embassy personnel in El Salvador including current and former MILGROUP officials, and Salvadoran Air Force officials. We also obtained information from Mr. Felix Rodriguez, members of the Enterprise air crews and Southern Air Transport officials. I will be happy to respond to any questions.

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#### STATEMENT OF MICHAEL KOZAK

I am pleased to appear before the subcommittee today to respond to your request for information on unauthorized transfers of aviation fuels. Specifically, during the "Iran-Contra" hearings, reference was made to allegations that Nicaraguan Resistance flights had been refueled in September and October 1986 by the Salvadoran air force at Ilopango air base using U.S.-funded gasoline.

In a letter dated November 25, 1987, Senator Harkin requested an investigation into these allegations and asked

the Department to make a report to Congress of a "substantial" violation as provided in section 3(c) of the Arms Export Control Act.

The Department's preliminary inquiries indicated that there were two sources of aviation fuel at Ilopango, one operated by the Salvadoran air force and one operated by the Salvadoran Civil Aviation Department. The fuel in the air force storage facility was indeed paid for from the U.S. Military Assistance Program (MAP) during the period in question; however, it was not clear which of the two fuel facilities was the source of the fuel used by the Resistance flights. An examination of aviation gasoline delivery rates for MAP-procured fuels in the 1986-87 period indicated a consistent pattern of usage which did not suggest any substantial diversion of fuel to other than normal Salvadoran military operational requirements.

In a letter dated February 9, 1988, the Department reported the foregoing to Senator Harkin. Subsequently, at Senator Harkin's request, the General Accounting Office undertook an investigation of possible unauthorized diversions of U.S.-funded fuel and whether any U.S. personnel approved or were aware of such transfers.

Based on information obtained by the GAO, which was subsequently independently verified by a U.S. Army fuels expert, it has been possible to identify the transfers referred to in the course of the Iran-Contra hearings. According to the GAO's data, between April and December, 1986,

the Salvadoran air force transferred 61,107 gallons of aviation fuels funded by the U.S. Military Assistance Program to third parties carrying out flights in support of the Nicaraguan Resistance. Of this total, 24,311 gallons were sold to aircraft operated by the Resistance, and 36,796 gallons were sold to U.S. commercial aircraft flying under privately funded contracts in support of the Resistance.

As the GAO noted in its report, they found no evidence that any U.S. Government personnel approved or were aware of any transfers of MAP-funded fuel to third parties. The Salvadoran air force did not seek U.S. government approval for the transfers, as required by the Arms Export Control Act and as agreed to by the Government of El Salvador in the agreement under which the fuel was provided by the United States.

Based on its review of this matter, the Department is preparing a report to Congress of a violation in accordance with section 3 of the Arms Export Control Act. For a variety of reasons which are set forth below, the Department does not believe the violation to be "substantial" in nature (in regard to either quantity or gravity of the consequences) and hence intends to submit its report as provided in section 3(e).

In this regard, the total quantity of unauthorized fuel transfers was 61,107 gallons, and the total dollar value of the fuel transferred was approximately \$100,000. The total Military Assistance Program funds for El Salvador in fiscal years 1986 and 1987 were \$120 million and \$110 million



respectively. Furthermore, it does not appear that the transferred fuel sustained the Nicaraguan Resistance resupply operations over an extended period of time, nor does it appear that this was support that the Resistance could not have purchased from any commercial facility.

A lack of understanding on the part of Salvadoran airfield personnel as to which fuel issuances required prior US Government approval, and which did not, seems to have been a main, if not the most important, factor in this unauthorized diversion. U.S. Military Airlift Command flights, for instance, were routinely refueled at Ilopango. So were U.S.-contract flights for the Nicaraguan Humanitarian Assistance Office. Fuel was provided to other miscellaneous aircraft, such as private flights involved in earthquake relief efforts, and, on at least one occasion, a Mexican government aircraft transporting the president of El Salvador was refueled. We therefore believe that the lack of clear guidelines on refueling was in large measure responsible for unauthorized diversions of fuel.

In summary, the Department is convinced that transfers of fuel without U.S. consent did occur. This violated the retransfer provisions of the Letter of Offer and Acceptance under which the fuel was provided to El Salvador. The GAO report found no evidence that any U.S. Government personnel approved or were aware of any transfers of MAP-funded fuel to third parties. Our Embassy in San Salvador has been working with the Salvadoran government to rectify the situation, and has informed us that the Government of El Salvador has expressed willingness to take whatever steps are necessary to prevent unauthorized transfers. The Department has also

been working with the Department of Defense and the U.S. Military Group in El Salvador to establish controls over issuance of MAP-funded fuel. Corrective actions are thus under way.

This concludes my statement. I stand ready to respond to any questions you may have. Thank you.

#### STATEMENT OF H. DIEHL MCKALIP

I AM PLEASED TO APPEAR BEFORE YOU TO DISCUSS OUR SECURITY ASSISTANCE PROGRAM IN EL SALVADOR AND THE REPORT CONCERNING THE USE AND TRANSFER OF CERTAIN FUELS PAID FOR BY THE UNITED STATES GOVERNMENT.

AS YOU HAVE BEEN ADVISED BY THE GENERAL ACCOUNTING OFFICE, DURING 1986 AND 1988 THE SALVADORAN AIR FORCE TRANSFERRED AVIATION FUEL AT ILOPANGO AIR BASE THAT HAD BEEN PROCURED WITH MILITARY ASSISTANCE PROGRAM FUNDS TO THIRD PARTIES WITHOUT U.S. GOVERNMENT CONSENT. THESE TRANSFERS VIOLATED SALES AGREEMENTS BETWEEN THE U.S. AND SALVADORAN GOVERNMENTS. NO EVIDENCE WAS FOUND THAT ANY U.S. GOVERNMENT PERSONNEL APPROVED OR WERE AWARE OF THESE TRANSFERS.

THE DEFENSE SECURITY ASSISTANCE AGENCY IS THE ACTIVITY WITHIN THE DEPARTMENT OF DEFENSE WHICH HAS THE PRINCIPAL RESPONSIBILITY FOR SUPERVISING THE IMPLEMENTATION OF APPROVED SECURITY ASSISTANCE PROGRAMS WORLD-WIDE. WE ARE ASSISTED IN THIS MISSION BY THE THREE MILITARY DEPARTMENTS, WHICH DO MOST OF THE PROCUREMENT AND DELIVERY OF REQUESTED DEFENSE ARTICLES AND SERVICES, AND OUR LIAISON ORGANIZATIONS IN THOSE COUNTRIES TO WHICH WE ARE PROVIDING SECURITY ASSISTANCE -- THEY ASSIST IN PROGRAM PLANNING WITH THE HOST GOVERNMENT AND MONITOR THE USE OF ITEMS AND SERVICES PROVIDED. IN EL SALVADOR OUR LIAISON ORGANIZATION IS CALLED THE U.S. MILITARY GROUP OR MILGROUP.

DSAA TAKES ITS RESPONSIBILITIES VERY SERIOUSLY, ESPECIALLY OUR EFFORTS TO ENSURE AGAINST FRAUD, WASTE AND ABUSE IN THE

PROCUREMENT AND USE OF MILITARY SUPPLIES. WE ARE WELL AWARE THAT U.S. TAXPAYER MONIES ARE OFTEN INVOLVED, AND OUR GOAL IS TO OBTAIN THE MAXIMUM SECURITY BENEFITS FOR THE RESOURCES INVESTED.

THE REPORT OF THE GAO WAS TROUBLESOME TO US ON TWO COUNTS. NOT ONLY WERE WE CONCERNED ABOUT THE UNAUTHORIZED TRANSFERS OF FUELS TO THIRD PARTIES, BUT WE WERE CONCERNED ABOUT THE USE TO WHICH ANY FUNDS RECOVERED BY THE SALVADORAN AIR FORCE AS A RESULT OF THE TRANSFERS WERE BEING PUT. WE HAVE TAKEN ACTIONS WHICH WILL ENSURE THAT THESE OCCURRENCES ARE NOT REPEATED.

IT IS IMPORTANT TO PLACE THESE EVENTS IN A PROPER CONTEXT. THE 1980S WERE A PERIOD OF RAPID EXPANSION OF THE SALVADORAN ARMED FORCES AS THEY ORGANIZED TO COUNTER THE GUERRILLA THREAT TO THEIR COUNTRY. AS THEIR STRUCTURE EXPANDED, THE ARMED FORCES FOUND THEMSELVES UNABLE TO MEET MANY OF THEIR LOGISTIC REQUIREMENTS FROM THEIR OWN BUDGETS. IN LATE 1984 THE ARMED FORCES ASKED FOR AND RECEIVED PERMISSION TO USE MILITARY ASSISTANCE PROGRAM MONIES TO PURCHASE VARIOUS AVIATION AND DIESEL FUELS.

SINCE THAT TIME WE HAVE USED MAP FUNDS TO PURCHASE A TOTAL OF \$37.6 MILLION WORTH OF FUEL FOR EL SALVADOR THROUGH FOREIGN MILITARY SALES PROCEDURES. AS NOTED IN THE GAO REPORT, A TOTAL OF \$21.1 MILLION WAS PURCHASED DURING THE PERIOD OF THE INVESTIGATION. THE FIRST DELIVERIES OF MAP-FUNDED FUEL WERE MADE TO ILOPANGO AIR BASE IN AUGUST OF 1985, INITIALLY MIXED WITH FUEL PURCHASED WITH SALVADORAN NATIONAL FUNDS. MAP-FUNDED FUEL PURCHASES CONTINUE TODAY.

THE UNAUTHORIZED TRANSFERS THAT OCCURRED THEREAFTER RAISED PARTICULAR CONCERNS AS WAS NOTED EARLIER. OUR MILGROUP ADVISED THAT THE SALVADORAN AIR FORCE WAS BEING REIMBURSED FOR FUELS SOLD TO THIRD-PARTY AIRCRAFT, AS WELL AS THOSE OF THE U.S. GOVERNMENT, WITH CASH PAYMENTS. IN REVIEWING THE APPLICABLE LAWS AND POLICIES WE CONFIRMED THAT THE U.S. GOVERNMENT DOES NOT RETAIN REVERSIONARY RIGHTS TO THE PROCEEDS FROM THE RESALE OF DEFENSE ARTICLES ACQUIRED WITH MAP MONIES. THE PURCHASING COUNTRY

RECEIVES TITLE TO THE ITEMS AND IS ENTITLED TO THE PROCEEDS OF ANY SUCH SALES, SUBJECT TO APPROPRIATE THIRD-PARTY TRANSFER APPROVAL BY THE U.S. GOVERNMENT.

WE WERE CONCERNED, HOWEVER, THAT MAP FUNDS MIGHT BE CONVERTED INTO UNRESTRICTED CASH BY THE RECIPIENT COUNTRY. WE THEREFORE ISSUED INSTRUCTIONS THAT ANY AUTHORIZED SALES OF FUEL BE REIMBURSED TO THE SALVADORAN FOREIGN MILITARY SALES HOLDING ACCOUNT. THIS ACTION RETURNS THESE MONIES TO U.S. GOVERNMENT CONTROL FOR REUTILIZATION FOR FUTURE PURCHASES OF DEFENSE ARTICLES AND SERVICES IN THE UNITED STATES.

PRIOR TO THIS CHANGE IN POLICY IN 1987, \$801,519 HAD BEEN PAID DIRECTLY TO THE SALVADORAN AIR FORCE FOR THE SALE OF FUEL. \$973,543 HAS BEEN CREDITED TO THE HOLDING ACCOUNT SINCE THE NEW PROCEDURES WERE INSTITUTED.

IT SHOULD BE NOTED THAT THE SALVADORAN AIR FORCE COMMANDER HAS PROVIDED LEDGERS INDICATING THAT THE FUNDS RECEIVED FROM EARLIER SALES HAD BEEN USED FOR THE MAINTENANCE OF AND IMPROVEMENTS TO ILOPANGO AIR BASE. WE HAVE FOUND NO EVIDENCE TO THE CONTRARY.

REGARDING THE MORE BASIC ISSUE OF THE UNAUTHORIZED TRANSFER OF MAP-FUNDED FUEL TO THIRD PARTIES, WE BECAME AWARE OF SUCH ALLEGATIONS IN LATE 1987. WE HAD OUR MILGROUP REVIEW THE DELIVERIES OF AVIATION GASOLINE TO DETERMINE IF THERE HAD BEEN ANY DIVERSIONS. THE REVIEW OF RECORDS INDICATED A CONSISTENT PATTERN OF FUEL USE IN 1985, 1986 AND 1987, AND WE WERE UNABLE TO DOCUMENT ANY SIGNIFICANT TRANSFER OF FUEL.

OUR PRELIMINARY EXAMINATION OF THIS SITUATION WAS HAMPERED BY THE ABSENCE OF ANY SPECIFICITY IN THE ALLEGATIONS AS TO TIME OF OCCURRENCE OR AMOUNTS OF FUEL. THIS WAS FURTHER COMPLICATED BECAUSE PURPORTED TRANSFERS SPANNED A PERIOD WHEN THE SALVADORAN AIR FORCE RECEIVED FUEL FUNDED BY NATIONAL MONIES AND U.S. MAP FUNDS. FURTHER, OUR EXAMINATION REVEALED THAT THERE WERE TWO SOURCES OF FUEL AT ILOPANGO AIR BASE, ONE BELONGING TO THE AIR FORCE AND ONE BELONGING TO THE SALVADORAN CIVIL AVIATION DEPARTMENT.

SINCE THE INITIATION OF THE GAO REVIEW, WE HAVE WORKED CLOSELY WITH THAT AGENCY AND HAVE TAKEN ADVANTAGE OF INFORMATION THAT HAS BEEN MADE AVAILABLE. IT WAS WITH THIS ASSISTANCE THAT WE WERE ABLE TO CONFIRM INDEPENDENT OF THE GAO THAT THE UNAUTHORIZED FUEL TRANSFERS OCCURRED.

AT THE TIME WE MODIFIED THE FUEL REIMBURSEMENT PROCEDURES WE ALSO INSTRUCTED THE MILGROUP TO REMIND THE SALVADORAN AIR FORCE OF THE REQUIREMENT TO OBTAIN U.S. GOVERNMENT PERMISSION PRIOR TO THE TRANSFER OF ANY DEFENSE ARTICLES PURCHASED WITH MAP FUNDS, INCLUDING FUEL. IN JANUARY OF THIS YEAR, AS A RESULT OF THE GAO REVIEW AND OUR CONFIRMING FUEL AUDIT, WE FURTHER INSTRUCTED THE MILGROUP TO COORDINATE WITH THE MILITARY AIRLIFT COMMAND TERMINAL MANAGER AT ILOPANGO AIR BASE TO MONITOR REFUELING ACTIVITIES TO ENSURE NO UNAUTHORIZED THIRD-PARTY TRANSFERS WERE MADE. WE FURTHER INITIATED ACTION, IN COOPERATION WITH THE STATE DEPARTMENT, TO NEGOTIATE AN AGREEMENT WITH THE GOVERNMENT OF EL SALVADOR TO ESTABLISH CLEARLY DEFINED CONTROLS AND PROCEDURES FOR ANY SALES OF MAP-FUNDED FUELS. THIS AGREEMENT IS CURRENTLY UNDER NEGOTIATION.

IN CLOSING, SEVERAL POINTS SHOULD BE CONSIDERED. REFUELING OF TRANSIENT AIRCRAFT IS A COMMON PRACTICE WORLDWIDE, AND THE ACTIONS AT ILOPANGO AIR BASE WERE CONSISTENT WITH THIS PRACTICE. THERE IS NO INDICATION THAT ANY INDIVIDUALS ASSIGNED TO THE SALVADORAN AIR FORCE OR U.S. SECURITY ASSISTANCE ACTIVITIES MADE ANY OF THE UNAUTHORIZED FUEL TRANSFERS EXCEPT IN ACCORD WITH THIS PRACTICE OR PROFITED THEREFROM. AND, THE OVERWHELMING AMOUNT OF THE FUEL PURCHASED BY EL SALVADOR USING MAP MONIES, OVER \$38 MILLION TO DATE, WAS USED PROPERLY AND IN ACCORD WITH U.S. LAW AND POLICY.

THE GAO INVESTIGATION BROUGHT A PROBLEM TO THE ATTENTION OF THE DEFENSE SECURITY ASSISTANCE AGENCY. WE HAVE TAKEN APPROPRIATE STEPS TO ENSURE UNAUTHORIZED FUEL TRANSFERS TO NOT RECUR AND THAT PAYMENTS RECEIVED FOR AUTHORIZED TRANSFERS ARE PROPERLY CONTROLLED AND REUTILIZED. AND, THE GOVERNMENT OF EL SALVADOR AND THE SALVADORAN AIR FORCE HAVE COOPERATED FULLY IN THIS MATTER.                   THANK YOU.



## GENERAL QUESTIONS

Senator LEAHY. Let me, if I could—and I would like to ask the other two witnesses some follow-up questions on this to make sure that I have this well in my own mind—but first, Mr. Conahan, just so I can be sure who is accountable here, who did you speak to in the course of your investigation who would have known if any U.S. Government personnel were involved?

## WHO WAS INTERVIEWED DURING THE INVESTIGATION

Mr. CONAHAN. We talked in El Salvador with Embassy officials, to include specifically the MILGROUP people. We talked to the commander of the MILGROUP, Colonel Steele, and to the head of the Air Force section, Lieutenant Colonel Rankin.

As I mentioned, they said that they did not get involved in any of the arrangements for the operation, including specifically arrangements for refueling the aircraft. They said that they were aware of the operations at Ilopango and had reported this to their superiors.

Colonel Steele characterized himself as the eyes and ears of the Ambassador in this regard, but again reaffirmed that they had no part in setting up the operation or in any way implementing the operation.

We talked with Mr. Felix Rodriguez, who took full credit for setting up the operation. He had in hand, and it is part of the record, a letter from Lieutenant Colonel North asking him to approach the Salvadoran Air Force commander to make arrangements for providing space for housing and maintaining these airplanes.

He did get such agreement. He later got agreement from the Air Force commander to refuel the airplanes and he says—that is, Mr. Rodriguez says—he alone was involved, that no one from the U.S. Government was involved.

We then approached the Air Force commander in order to confirm what the three gentlemen told us. He was not very forthcoming in terms of discussing the operation. In fact, he would not discuss any part of the supply operation for the Contras.

Senator LEAHY. Do you mean the Salvadoran Air Force commander?

Mr. CONAHAN. I mean the Salvadoran Air Force commander. He said he would make available to us information regarding the fuel usage by the U.S. military aircraft and Contract aircraft as well as for his own Air Force, but so far as information concerning the Contra operation or other third parties, he said for national security reasons he would not discuss that with us.

## COOPERATION OF INTERVIEWEES

Senator LEAHY. Was there anyone in the U.S. Embassy in El Salvador who would not answer your questions when you asked them?

Mr. CONAHAN. No, sir. We got very good cooperation from the Departments of State and Defense.

Senator LEAHY. So where you had difficulty getting answers was with the Salvadoran officials. Is that correct? Or, that particular Salvadoran official, the Air Force commander?

Mr. CONAHAN. Essentially, that is the only Salvadoran official that we dealt with.

Senator LEAHY. What about officials here in Washington, in the State Department? Did you talk to any of them, or have contact with any of them?

Mr. CONAHAN. Yes; we talked with any number of people in both the Departments of State and Defense. They were forthcoming. They were cooperative, and I would have to characterize their participation in this work as generally helpful.

Senator LEAHY. Did you talk with anybody at the National Security Council?

Mr. CONAHAN. No, sir.

Senator LEAHY. Did you attempt to talk to anybody at the National Security Council?

Mr. CONAHAN. No, sir.

#### KNOWLEDGE OF ILLEGAL TRANSFERS

Senator LEAHY. Were you able to determine which of the Salvadoran Government officials, including military officials knew about these illegal transfers of MAP fuel?

Mr. CONAHAN. When we established that the commander of the Salvadoran Air Force was aware of the transfers, then we did not pursue it beyond that.

Senator LEAHY. He made it pretty clear it would not do you any good?

Mr. CONAHAN. Well, he made it clear that he was supporting the operation and that he was not going to talk any further about it.

#### TRACKING THE MISSING FUNDS

Senator LEAHY. So do you know what happened to the missing money?

Mr. CONAHAN. The \$690,000 in cash payments to the Air Force commander for fuel sold to refuel U.S. military and contract aircraft went into his accounts. The \$109,000 by the air crews and Southern Air Transport involved in the Contra supply operation likewise went into his accounts.

He told us that he used the funds from fuel sales to the U.S. government for military construction projects and other operating expenses within the Air Force—the Salvadoran Air Force establishment. We were not able to follow up on that. He did not make those records available.

Now, the MILGROUP commander in 1987 took a look at the records for, I believe the month of April 1987, the expenditure records of the Salvadoran Air Force and said that—and concluded that the funds were being used for the purposes stated by the Salvadoran Air Force commander.

We asked him if he had really verified that and he said no, that he had not. He just saw the books of account, the books of account laid out that these expenditures were made for these purposes.

As far as I am concerned, we have not found anyone within the U.S. Government that has done the kind of review audit verification to establish fully precisely what those funds were used for.

Senator LEAHY. Are there agencies in the U.S. Government that would have the authority to do that kind of an audit trail if they wanted to?

Mr. CONAHAN. Well, I would hope that the Department of Defense could convince the Salvadoran Air Force to make their records available so that that kind of a verification could be done. One of the difficulties—

Senator LEAHY. But that did not appear to have happened?

Mr. CONAHAN. No; I don't think that happened. I think one of the difficulties is, the MAP program has changed here in recent years. If you will recall prior to 1982, the U.S. Government retained title to the items that we transferred under the MAP grant program and the MILGROUP's in the recipient countries had an altogether different role with respect to those items than they have now.

They were required to maintain an inventory, updated annually, report on what was in place. The title to those goods remained with the U.S. Government and we had reversionary rights.

In 1982 the MAP funded program was merged with the Foreign Military Sales Program. The Arms Export Control Act procedures took over at that time and according to DSAA, now transfer title to the recipient at the time the shipment is made and the MILGROUP commander's role now is to kind of monitor, kind of what is going on rather than really track it, as he did before.

Senator LEAHY. Do we know how much MAP fuel was transferred to the Contra operation? We do not know the total amount that was misappropriated? We do not know how much was sold or given to private and foreign government parties, is that correct?

Mr. CONAHAN. That is correct, yes sir.

Senator LEAHY. Do we know how much fuel could have been misused or transferred without our consent, or without U.S. consent?

Mr. CONAHAN. Well, of course all of the transfers to the Contra operation were done without U.S. consent and to the extent that transfers were made to other third parties they were done without U.S. consent.

Senator LEAHY. Are we sure that is all of it?

Mr. CONAHAN. Sir?

Senator LEAHY. Are we sure that is all of it?

Mr. CONAHAN. No; we are not sure that that is all of it. Well, I think we are reasonably confident on the transfers to the Contra supply operation. I am not going to say that we are 100 percent sure, but we think we have a pretty good track on it, but we have no track whatever on all of the third parties and we do not know who all of those third parties might be.

Senator LEAHY. If there were U.S. officials—and I am not suggesting there were, but if there were U.S. officials aware of this during that time, we would have no way of knowing that either?

Mr. CONAHAN. I cannot comment on that, no sir.

#### GAO REPORT CONCLUSIONS

Senator LEAHY. Mr. Kozak, you have seen this GAO report. Do you disagree with the conclusion that there was a diversion by the Salvadorans?

Mr. KOZAK. No, sir; we do not disagree with that conclusion. We agree with it.

Senator LEAHY. Do you agree with their conclusion that nearly \$700,000 in cash payments by the United States to the Salvadoran Air Force just cannot be accounted for?

Mr. KOZAK. I think I would refer that question to Mr. McKalip, who is more familiar with the accounting on this.

Senator LEAHY. I guess the new figure is over \$800,000. Senator Harkin just corrected me. It is over \$800,000. Do you agree that that cannot be accounted for?

Mr. McKALIP. Senator, I would like to start out with a couple of general comments.

Senator LEAHY. I do not mean to cut off your comments, but do you agree with the report?

Mr. McKALIP. Let me answer your question specifically, Senator. I think we can account for the money. We know where it went. It went into the Ilopango Air Base operating accounts. We have seen documentations that suggest that.

There it merged with the national base operating funds so I cannot tell you what the dollar that went in was spent for when it came out the other end.

Senator LEAHY. Is that not sort of like saying that you saw a man go in and pick up a sack of money and walk out? You know where the money went?

Mr. McKALIP. I do not think so, sir. I think that is putting a light on it that is not necessarily correct.

#### ARMS CONTROL EXPORT ACT

Senator LEAHY. What light would you put on it? The money was put in there, which would be a substantial violation of the Arms Export Control Act, would it not? If the money was merged into an account where it loses all of its identity and is no longer accounted for, that would be a violation of the Arms Export Control Act, would it not?

Mr. McKALIP. You will have to bear with my interpretation of what the law requires.

Senator LEAHY. OK, then let me ask it this way and you can answer this yes or no. Would the Arms Export Control Act allow this money to go into a fund different than it was intended for, where we would lose track of where it went? Does it allow that?

Mr. McKALIP. The Arms Export Control Act allows title to pass and the reversionary rights for any funds generated by, in this case the resale, are not required to come back to the U.S. Government. I quickly add, it is not our intent.

Senator LEAHY. Do you realize that is not my question?

Mr. McKALIP. That is why we have taken measures to ensure that that does not happen.

Senator LEAHY. I understand, and I like the measures you have taken and I think they are good measures. But obviously you would not have taken those measures if you did not think that there was a problem before. Or am I incorrect in that? Or do you have an interpretation on that?



Mr. McKALIP. That is exactly right. It is rare that we supply something with U.S. funds, such as fuel. I can think offhand of only two other countries wherein we fund fuel purchases. It is rare that we provide something that is so immediately and readily convertible into cash. This is a rather unique thing in the security assistance business.

Senator LEAHY. Would it also be rare to supply fuel and then require the U.S. Government to buy it back for our own use?

Mr. McKALIP. You have a situation—and I believe you will understand this, Senator—where in a sense the buy-back is simply the transfer of funds from the ultimate consumer, and let us say it is a U.S. Air Force aircraft and so it would be a consumption from the defense budget and it is an opportunity to transfer the funds back to the security assistance—

Senator LEAHY. That is not my point. What we are saying is, we are paying for it twice. In other words, if you provide fuel—if you just put out fuel under whatever security arrangement and then you send down an Air Force plane and they have to buy the fuel, do we not pay for it twice?

Mr. McKALIP. No; I do not believe so, sir. The Air Force—and again, I am being notional—the Air Force, the defense budget is reimbursing the security assistance budget, so we can either replace the fuel or use it for another approved requirement for El Salvador.

#### WHERE THE FUNDS WENT

Senator LEAHY. If that happened. But if the money just goes out and you have no idea where it goes, It is not replacing anything. We are paying for it twice, are we not?

Mr. McKALIP. We believe we have an idea where it went.

Senator LEAHY. Where?

Mr. McKALIP. It went into needed operational and maintenance requirements at Ilopango Air Base.

Senator LEAHY. Which one? Name one that you know—that you know for a fact where it went. Name one.

Mr. McKALIP. The entire amount?

Senator LEAHY. This is over \$800,000. What did it buy? Ladders, paint, doors, hangars—what?

Mr. McKALIP. All of the above.

Senator LEAHY. OK. How many ladders?

Mr. McKALIP. I cannot tell you that.

Senator LEAHY. How many doors? Do not tell me “all of the above” if you do not know where it went. Now, come on.

For one thing, as I stated before, I applaud the efforts you have made to try to close these loopholes and the GAO has done a very serious study here. I think Mr. Kozak is trying to do a very serious study.

I am not trying to trick you. I am not trying to debate with you. But at least give us the credit that we are doing some work here, that we want to know where the money goes.

The administration is going to ask us to continue to fund El Salvador at the rate of \$1.5 million every single day, for a little country that is smaller than my own State of Vermont. A lot of people



in my State are going to ask me—before I vote for that—if I can demonstrate to them that I know where the money is going.

Now, we know the money was there. We know it went into the account. Let us say we all agree on that. Tell me where it went, because if we do not know where it went, it is a violation of the Arms Export Control Act, is it not?

Mr. McKALIP. I would have to show you where their entire expenditures went that year, including the national funds that they contributed to the operating budget of that air base.

Senator LEAHY. OK, and have they told us that? Have they told us where their funds went, including this additional \$800,000?

Mr. McKALIP. No; they have not.

Senator LEAHY. As I understand, they stonewalled the GAO when they asked them. Did they stonewall you too, or have you asked them? Let me break that down. They stonewalled GAO. We agree with that, do we not? Have you asked them where it went?

Mr. McKALIP. We have not asked them for a tracking out the other side.

Mr. CONAHAN. Mr. Chairman——

Senator LEAHY. I want to be fair, because I want to make sure that we are understanding each other. Mr. Conahan, you wanted to add something.

Mr. CONAHAN. Yes; I just need to say that we did not ask the Salvadoran Air Force commander specifically to track that \$800,000. That was paid by the U.S. Government for the fuel supply to the U.S. military and contract aircraft. I just wanted to put that on the record. That was not part of our effort.

Senator LEAHY. Senator Harkin?

#### ACCOUNTING FOR THE FUNDS

Senator HARKIN. Mr. Chairman, I understand that Mr. McKalip said that he had accounts that would show where that money went.

Mr. McKALIP. That is correct.

Senator HARKIN. Could you make those accounts available to this committee?

Mr. McKALIP. I would have to see if they are available. They became——

Senator HARKIN. You said you had them.

Mr. McKALIP. We became aware of them in this context, Senator, when we, at the request of the Department of State, corroborated the findings of the GAO this spring.

The individual that we sent to El Salvador to effect that corroboration looked further into where those cash moneys went. He reported that he was shown accounts which moved those receipts into the operating budget of Ilopango Air Base and merged it with their national funds.

I would certainly try to make those books available to you or invite the GAO to join with me in another visit down there. I am moving into an area where a foreign country's books are involved. They have been open with us where our moneys are involved in the past. I would hope that they would continue to be open with us.

Senator HARKIN. I will follow up on that. I did not mean to take any more of the chairman's time.

Senator LEAHY. If you want to follow up, go ahead.

Senator HARKIN. Well, quite frankly, it does not really make any difference whether or not you can account for those funds, Mr. McKalip. The fact that the items were transferred violates section 3(c) of the Arms Export Control Act, does it not?

I would like to know where the money went, because quite frankly I question whether or not you can find any accounts as to where that money went. This is cash money.

But nonetheless, my point is the fact that the fuel was transferred is a violation of the Arms Export Control Act.

Mr. McKALIP. We believe we agree with the GAO that the unauthorized transfers to third parties violated the Arms Export Control Act. I would leave it to my colleagues at State to say whether it is 3(c) or 3(e).

#### AUTHORIZING THE TRANSFER OF THE FUNDS

Senator HARKIN. Well, whatever. So you believe it is. All right, then. Who was in charge of the transfer? If it was a violation, who was in charge of the transfer?

Mr. McKALIP. If you will permit me, I think—and let me start out by saying we have had a very good relationship with the GAO in pursuing this audit. They have been open with us. We believe we have been open with them. We do not disagree in the conclusions they have come to. In fact, the steps we have taken have been because we have come to similar conclusions.

But I think it is important to paint a picture of the situation in El Salvador at the time, which I would suggest—you know you have a situation where reasonable men can agree, or can disagree on what occurred.

The first point, the arrangement that was apparently entered into by Mr. Rodriguez occurred before the United States with its MAP funding began paying for all of the fuel, therefore you can conceivably conclude that there was absolutely nothing wrong with that relationship from a point of view of the Arms Export Control Act at that time.

Senator HARKIN. I did not say anything about the relationship. I said whoever authorized the transfer.

Mr. McKALIP. Let me speak about the person who authorized the transfer and let us, just for the sake of argument let us say it was Bustillo, the commander himself.

Senator HARKIN. Do you know that that is the case?

Mr. McKALIP. I did not know that that is the case. I said, for the sake of argument. I do not know who authorized it. You had a situation, if I understand the GAO report correctly, where only one instance—one instance that was—it was identifiable that the aircraft was not a U.S. flag or registered aircraft.

Now, this does not make it right, I hasten to add. But I am trying to suggest to you that it was not a situation as black and white as it may first seem.

You further had a situation where there was both a military and a civilian side of the field. There were fueling facilities on the civilian side as well. We believe now that those were not used, but once

again it paints a situation much less clear than might first be assumed.

#### MAP FUEL PROCEDURES

Senator LEAHY. Let me say this, and I have said it a number of times. I compliment you on taking steps since this incident to be more accountable, but let us go through those steps. What are the procedures followed today as far as MAP fuel is concerned?

Mr. McKALIP. Well, the procedures today would be quite simple: that they would need our authorization for third party transfers and third party transfers do not include transfers back to the U.S. Government. They do need to be—these transfers do need to be paid for, but those payments are in the form of fund transfers which the Salvadoran Air Force never sees, between the purchasing organization and the foreign military sales trust fund, which we administer, so that those funds get back into the security assistance business.

Senator LEAHY. So if somebody were to come in—Southern Air, for example—and fuel up their transport, \$10,000 worth, whatever it costs to fuel it up, that money, however accounted for, however transferred, would go into an FMS trust fund today?

Mr. McKALIP. That's right. They should have a number, a voucher number which is given them by the firm that has—the U.S. Government agency that has chartered them.

Senator LEAHY. So the United States, either directly or through its contracts, has to pay to buy this fuel and we will know where those payments go.

Mr. McKALIP. They will go into the El Salvadoran slice of the trust fund, we will control them, and they will be utilized for further security assistance purchases.

Senator LEAHY. I understand that. And had these procedures been in place in the past, the issue we are discussing today probably would not have happened, is that correct?

Mr. McKALIP. The funds would have been controlled more to your and my liking.

Senator LEAHY. We would have known where they were; we would have known where they went in, where they came out.

Mr. McKALIP. You are exactly right, Senator.

#### ATTEMPTING TO TRACK THE FUNDS

Senator LEAHY. Now, with the amount of money here, are you going to undertake, or are you undertaking, or will you undertake an attempt to find exactly where those funds went?

Mr. McKALIP. I will make that attempt.

Senator LEAHY. But no such attempt has been made so far? And I am not directing you to do something about it.

Mr. McKALIP. I am certainly not trying to belabor the point, but we satisfied ourselves that they went into the operating budget of the air base, and there they merged with national funds, and their unique identity was lost.

Senator LEAHY. Now, that is the point that I have some problem with, as you may have gathered, and I may have been overly subtle in making my point.

Mr. McKALIP. We feel about that in northwestern Pennsylvania just like you do in Vermont.

Senator LEAHY. Actually we are very calm, cool, collected people in Vermont, for the most part, except now and then. [Laughter.]

You say you know where it went, but actually, sir, how can you know where it went? I mean, what do you base it on, the air commander's word, or the base commander or what?

Mr. McKALIP. I do not know where it went precisely, no, but with all of our foreign military sales relationships, these are friends, they are allies. There is an element of trust involved. I would be misleading you if I said around the world that there was an American representative standing over the dispensing of every gallon of fuel we might buy, every nut or bolt we furnish. Unfortunately, there are abuses occurring, and we try to correct them as we come to them.

#### IS EL SALVADOR AN EXAMPLE OF A LARGER PROBLEM

Senator LEAHY. I am trying to think how many billions we have spent so far, say in the past 10 years, down in El Salvador. It goes into about \$3 billion, \$3,000 million. I am not suggesting that every dollar of that could be followed, by any means. In a perfect world, fine. We spend \$3 billion here in the United States, and you might not be able to follow every cent of it.

But there is a growing concern among Republicans and Democrats alike—it is not a partisan issue—that a lot of the money that has gone into El Salvador has gone into that country on one day and the next day it is bled right back out of that country to Miami and to other areas. One of the problems is that they have, as you know, a very, very real hard currency problem. Not as bad as some of the other countries in Central America, but a very significant one. In fact, absent U.S. aid, there is a question just what they would do for hard currency at all.

We see a lot of that going into banks. We see a lot of it going outside the recipient country. They may be friends and allies but we have to assume that a lot of that money is coming from the U.S. Treasury and is being improperly diverted.

Now, there are a whole lot of programs, other than MAP, sending money down there. My concern, as I stated at the beginning, is not the \$700,000 or \$800,000. This committee alone is going to handle billions and billions of dollars, \$13 to \$14 billion, as one subcommittee in one small part of the overall appropriations bill.

I am looking at this as an example, is this reflective of other problems we may have in El Salvador, because I cannot for the life of me know where we are even going to find the money that the administration is requesting for El Salvador, and certainly not if we have any real problems down there.

So I think it behooves us to be able to follow the funds very closely. My concern, and I find that it really would strain credulity to assume, with all the other problems El Salvador has had—and I hate to tar everybody with one brush—but with all the problems they have had, I find it very difficult to assume that this amount of money going into their regular operating account could be consid-



ered automatically to have been used just at Ilopango for appropriate other things.

I mean if we are paying for a big share of Ilopango, as you and I know we are, and that money has gone into paying for Ilopango, I suppose we could say well, we are going to pay for it anyway, so that is fine. But if it goes elsewhere, then we have a question. If it goes into somebody's condominium in Miami, that is one issue. If it goes into conduct that is expressly prohibited by U.S. law for any of us as members of the government to be involved with, of course that remains another thing.

#### REPAYMENT OF DIVERTED FUNDS

Now, I am stepping on the time of my good friend from Iowa, but I wonder if I could just ask one two-part question of Mr. Kozak, and that is, when you found out about this, did the State Department tell El Salvador that we were concerned about this, that we were angry? And did we ask restitution from them for the diverted fuel?

Mr. KOZAK. Mr. Chairman, I should mention now—and I do this with some trepidation—that the Government of El Salvador, the new Minister of Defense, has offered to reimburse us for the fuel. We are exploring this with the DSAA because of this problem of legal title. We may end up with something that we do not know what to do with.

We are interested, as you are, in where the money went. We are reassured by the indications that the money has gone into the Ilopango account. But I think more importantly, we are reassured by the steps DSAA has taken to ensure that you do not have this kind of thing going on again.

Again, it is this unique kind of situation where you are talking about a defense article that is immediately convertible into cash. I had a little rundown done regarding previous violations of the Arms Export Control Act, and I see about a dozen under 3(e) and a dozen under 3(c)—some of them overlap—since 1977. Most of them involve transfers of tanks and aircraft and things like that. Or sometimes it is little stuff, like radios. But it is concrete items that are not exactly cash generators.

#### ANALYSIS OF CAPITAL FLIGHT

I wanted to comment, Mr. Chairman, though, on one item you mentioned, which was this question of capital flight to Miami as being an evidence of corruption. I do not think the two necessarily go together. In fact, the problem of capital flight is one of the reasons we have had to put more aid in to countries like El Salvador, because of both their political and economic situation generating that. And I do not want to try to do figures off the top of my head, but we could get for you for the record a little analysis of that from our economic people. That is not evidence that there is not corruption, but that there is another reason for capital showing up there.

Senator LEAHY. If you would send Senator Kasten and myself that analysis, we would appreciate it.

Mr. KOZAK. I would be happy to.

[The information follows:]



During the decade of the 80's, civil war, economic depression and a major earthquake have battered the economic and social fabric of El Salvador. The economy has, in the last two years, made modest gains after the sharp decline in the early part of the decade, but has not yet recovered to its high point of 1978.

The insurgency has cost the country in excess of \$1.5 billion in damage to economic infrastructure, loss of investments and damage to major export crops. The war has caused more than 60,000 deaths, displaced more than 500,000 people (approximately 130,000 remain displaced) within El Salvador and precipitated the flight of another 800,000 individuals to countries overseas--principally the U.S. and Canada. In such circumstances, it is not surprising that Salvadoran citizens who had the capability of doing so sought to place funds outside the country, thus further exacerbating the difficulties facing the government.

To address the problem of restoring investor confidence and rectifying the majority of the underlying structural problems that contributed to the economic decline, we long ago concluded that the government of El Salvador (GOES) had to undertake a comprehensive reform program to bring about sustained economic growth accompanied by an equitable spreading of the benefits of this growth. In short, the reform program must create the conditions which afford the Salvadoran citizenry with an enhanced economic and political stake in their own society thereby eliminating the root causes of the insurgency.

To date, the USG's balance of payments program has helped brake the economic slide and it has also helped to establish a partial basis from which to launch an economic recovery. Without a comprehensive restructuring of the economy however, our assistance would only be a palliative that would be increasingly less effective to deal with the country's serious economic condition.

Accordingly, our macroeconomic objective is to assist the GOES to achieve sustainable economic growth with equity without continued dependence on compensatory balance of payments assistance. We recognize that the macroeconomic structural reform, while critical for economic recuperation will, in the short-run, have a negative impact on certain sectors of the population (e.g., urban poor and the rural landless).

To cushion the shock, our strategy will include a series of labor intensive infrastructure activities (e.g., construction of rural roads, water systems, schools and repair of the electrical grid) to be carried out through our Municipalities in Action, Public Services Restoration and Rehabilitation, Displaced Persons, and Earthquake Reconstruction programs. These efforts will serve the dual purpose of providing the country with badly needed productive infrastructure while generating short-term employment to enable the population affected by the adjustments to sustain themselves until the economy begins to grow and they can be absorbed into the mainstream of the work force.

In addition to macroeconomic policy reform, our blueprint for achieving long-term economic growth will emphasize continued USG assistance to increase production and productivity.

It is our judgment that this strategy (the diversification and reorientation of the economy toward an export-led drive by the private sector) will have important equity dimensions in addition to fostering sustained economic growth.

While employment and income for the country's poor are critical issues that must be addressed, inequities in access to social services also must be corrected. Accordingly, our strategy also includes substantial continued involvement in the social sectors to improve the quality of life of the poor majority and to ensure that they can take advantage of the new opportunities that will be presented by the economic growth.

Strengthening El Salvador's nascent democracy will continue to be an important part of AID's strategy. Our efforts are designed to enhance the capability and effectiveness of the public bodies that form the core of the democratic process, so that they may better serve the needs of the populace. As these institutions, (e.g., the Judiciary, the Legislature, the labor unions, human rights commissions, municipal government and the electoral process) become stronger and improve their record in serving the public, they will help foster a sense of confidence by the citizenry that they can voice their views and seek redress through the democratic process.

Allegations of abuse of U.S. foreign assistance funds to El Salvador are not new: allegations have been raised since 1984.

These early allegations were not totally without merit. Some management and performance problems did exist in 1984, but they were recognized by AID and appropriate corrective action was taken. In recent years, only two incidents in connection with AID programs have occurred, both involving local currency, not appropriated dollars.

It has also been alleged that benefits of our foreign assistance to El Salvador have been diluted through capital flight. The concept and definition of "flight capital" is subject to numerous interpretations and calculations. Does it only include capital leaving a country due to fear of devaluation, political jitters, etc., or does it also include money leaving for "normal" economic reasons (i.e. better returns, interest rates, etc. elsewhere) which occurs over time in every country?

Regardless of the definition used, the Congress should rest assured that strict controls are already in place to prevent our aid from being converted to flight capital. Our ESF balance of payments support provides financing for raw materials, intermediate and capital goods for the private sector. All imports are subject to a price checking system managed by the Central Bank of El Salvador, which verifies the prices of foreign exchange transactions, to limit the possibility of under or overinvoicing of export or import transactions.

Given the size and nature of our assistance program for El Salvador, no financial control system can be totally foolproof. However, we believe that adequate financial controls are in place, which, combined with numerous strict audits of these programs, will prevent diversion and ensure proper use of all funds appropriated by Congress.

## REIMBURSEMENT OF FUNDS

Senator LEAHY. Senator Harkin.

Senator HARKIN. Well, Mr. Kozak, I am interested in this offer of the Salvadorans to reimburse us for the fuel.

Now, when did that come through? When did you get that offer?

Mr. KOZAK. Just this week.

Senator HARKIN. When? Yesterday?

Mr. KOZAK. The day before yesterday. Our ambassador was talking with the new Minister of Defense in El Salvador.

Senator HARKIN. Who is the new Minister of Defense?

Mr. KOZAK. General Larios.

Senator HARKIN. And all of a sudden they just decided to reimburse us for this fuel?

Mr. KOZAK. As they have seen the GAO report and the fact that we concur in it, they said if that was a problem up here that they would be happy to try to take measures of rectification, whatever that might be. They suggested at one point, or at least it came up in the discussion, that they would be willing to consider some form of reimbursement. One of the things they suggested is maybe that when the Vice President's plane comes down, they would refuel it without charging.

Of course, now we have got a new arrangement for payment, that does not work any more. So they are looking for some way to rectify this. We have not figured out yet, though, whether there is anything there to rectify in terms of dollar amounts. As far as I understand it, all of these transfers were in fact sales, whether it was to the Nicaraguan resistance, to the United States Government, or to third parties, at least as far as we know. I believe that is what I understood the GAO report to indicate.

Senator HARKIN. Indicate what?

Mr. KOZAK. In other words, they sold the fuel; they got money back. And we have been talking about where the money went.

Senator HARKIN. I understand they got cash.

Mr. KOZAK. Yes.

Senator HARKIN. Not credits, but cash.

Mr. KOZAK. So if they have put it back into something that was a proper defense activity—again, it is this problem of title. Since it is technically their fuel to sell, whether it is to us or to somebody else, for them to reimburse us, what do we do with the money then? Whose account does it go into? That is that kind of problem.

## AVAILABILITY OF ACCOUNTING RECORDS

Senator HARKIN. Do we know who took actual possession of the money that was paid over? Who was the individual who took charge of that money?

Mr. KOZAK. I believe the checks—at least the U.S. Government ones—were made out to the Air Force.

Mr. MCKALIP. I do not know who in the clerical chain in the Salvadoran Air Force physically took the money and put it into the account. I am not familiar with their accounting procedures, no. But we do know that these receipts showed up in their accounts; in fact, that is the way we corroborated the GAO findings.

Senator HARKIN. And you are going to make those available to us, are you not?

Mr. McKALIP. If they are available to me, they are yours, sir.

Senator HARKIN. Well, you are talking about something we have not seen. I mean I am not doubting your veracity, but I would like to see them. I would like to see those accounts.

Mr. CONAHAN. Senator, as I said, I cannot in any way trace where these funds went or how they were used. But for the most part, we are talking about cash payments to the El Salvadoran Air Force. We are talking about payments that were made by the Embassy by check. We are talking about cash payments by Southern Air Transport, who were on charter flights for the U.S. Government. We are talking about cash payments for the Contra operation. We are talking presumably about cash payments for fuel transfers to other third parties.

Senator HARKIN. Well, the \$801,000, do you have any idea how much of that was actual hard cash? How much of it was in checks?

Mr. CONAHAN. I think about half of the \$801,000 might have been in checks. The other half would have been in cash payments.

Senator HARKIN. Can we find out who made those checks out and who cashed those checks?

Mr. CONAHAN. Who cashed the checks? Well, I guess we could go to the Treasury Reconciliation Department and see who cashed those checks.

Senator HARKIN. It might be interesting to find out. If you could find out, for example—and I guess what I am concerned about is that we have this General Bustillo, and I think—was he a colonel at that time? Anyway, General Bustillo in charge of the operations at Ilopango, who took constructive, at least—well, maybe more than constructive—actual physical control of the money that came in, and again, no accounting was made of it.

But you say you have the accounts, and I would like to see them. You say you cannot trace it. And here is General Bustillo. Is he not, Mr. Kozak, lined up to be the next defense minister in El Salvador?

Mr. KOZAK. The newly appointed defense minister is General Larios, and General Bustillo remains the head of the air force—not just of Ilopango, but he is the head of the Salvadoran Air Force.

Senator HARKIN. I understand that Larios is only in for 6 months, and Bustillo is to follow him, is that right?

Mr. KOZAK. I am not aware of that.

#### GENERAL BUSTILLO'S HANDLING OF THE FUNDS

Senator HARKIN. What I am trying to figure out is what did Bustillo do with the money that he had, physically had. You say that he had \$400,000 in cash and maybe \$400,000 in checks. If he had the checks, did he cash the checks?

Mr. CONAHAN. As I say, I do not have that information.

Senator HARKIN. How do you find that out? I mean, if I write a check to somebody, it is easy to trace. And if someone wrote him a check for fuel, surely we know what he did with the money.

Did he cash it? What did he do with it? I mean certainly I would think we could find that, could we not?



Mr. CONAHAN. I should think we could find those U.S. Government checks that were written by the Embassy and find out who cashed them.

Senator HARKIN. I would like to find that out.

Mr. CONAHAN. I do not know beyond that where it takes you, but you could find out who endorsed the check.

Mr. KOZAK. Senator, we will get that from the Embassy, I was told earlier that the checks were made out to the Air Force of El Salvador or something like that, to a government institution; but I want to see it for myself. We will get you that information.

[The information follows:]

#### TRACING CHECKS

We have asked the Embassy in San Salvador to provide the voucher numbers for the bills that the Salvadoran Air Force submitted for payment for the fuel purchased by the U.S. government for official flights. The actual payments were processed by the Department until December 1986, when the responsibility for financial transactions for the Department's operations in Latin American were transferred to a regional financial center in Mexico City. With the voucher numbers, the Department and Mexico City will be able to determine the numbers of the checks issued to the Salvadoran Air Force in payment. We will then submit the check numbers to Treasury for tracing. This procedure will likely require several weeks.

Senator HARKIN. How much money are we talking about there, U.S. Government? Was that about \$300,000?

Mr. CONAHAN. About \$390,000.

Senator HARKIN. \$390,000?

Mr. CONAHAN. Yes, sir; that is the checks.

Mr. KOZAK. There is another \$300,000 that was U.S. Government operations, Southern Air Transport under Contract to the U.S. Government when they were flying the humanitarian assistance. So that is, I guess—what is the total there, about \$700,000, \$800,000 in total; \$700,000 would be U.S. Government payments.

Senator HARKIN. And how about the cash? Who took control of the cash?

Who got paid the money? Was it General Bustillo?

Mr. CONAHAN. Well, certainly his organization; whether he received it directly or not is not altogether clear to us at the moment.

#### OTHER INSTANCES OF ILLEGAL TRANSFERS

Senator HARKIN. Mr. Kozak. Well, before I get onto that, I want to ask you, Mr. McKalip, regarding your exchange with the chairman where you pointed out that GAO found that the Salvadoran Air Force received, as we have pointed out, \$801,000 in cash for fuel that it received free from the U.S. foreign aid program.

You then went on to say that they took some of this and sold it for cash, which they put into an account for other purposes. And then Mr. Kozak said that there are a number of countries—you have got instances of this happening in other countries?

Mr. KOZAK. No, sir; I was talking about other countries that there were reports of transfers without the consent of the U.S. Government under the Arms Export Control Act.

And the concern there is not a question of what cash they got for it. I was making the distinction between the kinds of instances we have had before where it is transfers of tanks or something that



you can kind of see and are not readily convertible into cash. And in this kind of a situation where this is rather unique, where you have a commodity that can be turned into cash, and it is not highly visible like, say, a tank or an aircraft.

Senator HARKIN. Well, it just seemed to me that there was a point that was being made there.

So you say you have other cases of foreign governments selling off U.S. items acquired under the MAP. Do you have any?

Mr. KOZAK. Yes, sir.

Senator HARKIN. Where did they sell them?

Mr. KOZAK. The summary I have here says transfers. I assume that some money was paid. What I have here was reports that have been made to the Congress notifying either of unauthorized transfers—in other words, transfers to a third party without U.S. Government consent, in violation of section 3(e) or the reporting requirements under section 3(e) of the act, and also, reports to the Congress concerning possible substantial violations reported under section 3(c).

A number of these are classified reports. Without naming country names, this was a 3(e) type thing: a transfer by one friendly country to another of some U.S. origin aircraft or aircraft having U.S. origin engines, and they neglected to get the permission from us to make that transfer.

Senator HARKIN. What do we do in cases like that?

Mr. KOZAK. It depends on what the nature of the violation is. Now, in that particular case, the conclusion was that the transfer had been inadvertent. They were making a commercial sale of some old aircraft to another country, and they did not think that the engines were U.S. origin, and that therefore the notification requirement applied. So in that case you basically remind everybody, look to see that people are aware for the future.

We have had other cases where much more substantial things have happened, and these are the ones where we have just notified them as unauthorized transfers. There was another one involving a transfer of 70 tanks.

Senator HARKIN. Why do you not just make those available to us? I would like to look them over.

[The information follows:]

[Deleted.]

Mr. KOZAK. I think it gives you some context for how this fits into a worldwide scheme. That is why I asked for them myself, to get some sense of what other violations had been reported.

#### VIOLATING THE BOLAND AMENDMENT

Senator HARKIN. But for the fact that this violation was concocted by a group of individuals in clear violation of not only the Arms Export Control Act—now we are focusing on that—but also the Boland amendment, which is operative law, by the way. And so there are two violations here.

Mr. KOZAK. Well, Senator, I would have to defer.

Senator HARKIN. You not only have the illegal sales, but you have the transfer to the Contra network in violation of the Boland amendment.

Mr. KOZAK. Senator, I would have to defer to our legal staff on this. They have been reviewing this. We are going to have coming up to the Congress soon a notification of a violation under section 3(e); in other words, that an unauthorized transfer to a third party did occur.

I think that they have concluded that there was not a possible substantial violation within the meaning of section 3(c) of the act, both in terms of the quantity and gravity of this. The Boland amendment, I know, is being considered in that context, and of course, it was a statute that applied to U.S. personnel and U.S. appropriations, not to foreign personnel.

#### INVOLVEMENT OF THE ENTERPRISE

Senator HARKIN. Mr. Conahan, can you describe for us how the Enterprise funding worked for this operation?

Mr. CONAHAN. As I understand this, when Mr. Rodriguez projected that he needed additional funding for fuel purposes, he asked his associates here in the United States, and that money was made available to him in cash.

Senator HARKIN. How? From whom?

Mr. CONAHAN. I do not have information on who the individuals were. They were not identified to us, and I just simply do not have that information.

Senator HARKIN. It was not Mr. Secord?

Mr. CONAHAN. Well, it was Secord associates, whomever that might have been.

Senator HARKIN. Gave cash to Felix Rodriguez?

Mr. CONAHAN. Yes; and that organization gave cash to Felix Rodriguez that he in turn used to pay the Salvadoran Air Force.

Senator HARKIN. Where did Mr. Secord get the money?

Mr. CONAHAN. I have no information on that.

Senator HARKIN. And so, then, the funds were given to Rodriguez, and he used that to give to the El Salvadoran Air Force?

Mr. CONAHAN. Correct.

Senator HARKIN. For the fuel that was put in the airplanes that flew the missions, dropping supplies to the Contras?

Mr. CONAHAN. That is correct.

Senator HARKIN. So Mr. Rodriguez would have given this cash to someone in the Salvadoran Air Force?

Mr. CONAHAN. That is correct.

Senator HARKIN. Was there any indication that he would have given it to anyone other than General Bustillo?

Mr. CONAHAN. Yes; there was some indication in a conversation that we had with, I believe—well, it was in a conversation with Felix Rodriguez. He indicated that there was an accountant who received the funds, if not in all cases, from time to time.

It gets kind of murky and kind of fuzzy as to precisely how that is done, but we have references to making arrangements with General Bustillo, and then, from time to time, the reference to his accountant comes up in that kind of a conversation.

But I do not think that I am here in a position to give you clear, concise, fully conclusive evidence on how those payments were made precisely.

Senator HARKIN. Do you know when Rodriguez set up this network, when he set up this operation?

Mr. CONAHAN. He set it up shortly after he received the letter from Lieutenant Colonel North in September 1985.

Senator HARKIN. That is the September 20 letter?

Mr. CONAHAN. Yes.

Senator HARKIN. North wrote Felix Rodriguez asking him to secretly help with servicing and maintenance of Contra-supply aircraft using the Ilopango air base; that is the letter you are referring to?

Mr. CONAHAN. That is correct.

#### ROLE OF COLONEL STEELE

Senator HARKIN. What was the role of Colonel Steele in all of this? Where was he situated?

Mr. CONAHAN. Well, Colonel Steele was the commander of the military group associated with the United States Embassy in El Salvador. The military group is responsible, generally, for working with the recipient military establishments to determine requirements to be funded under the Military Assistance Program, to assure that shipments are efficiently and effectively facilitated into the country, to monitor, generally, that the material has been received, and that the military establishment, again, is generally using this material as intended.

As I say, it is a different, much looser association than we had under the previous Military Assistance Program, one which I quite frankly have not looked at closely in the past several years. But it was that sort of responsibility that he had at the U.S. Embassy. And as I said, he was asked by the ambassador to follow the supply operation and report back to the ambassador periodically on, generally, what was happening there.

Senator HARKIN. Mr. Kozak, Colonel Steele was head of the MILGROUP, but did he assign responsibility for monitoring air force operations to Lieutenant Colonel Rankin—David Rankin?

Mr. KOZAK. Senator, I do not know what internal arrangements existed within the MILGROUP at that time.

#### ROLE OF COLONEL RANKIN

Senator HARKIN. Do you know whether or not Rankin had offices at Ilopango?

Mr. KOZAK. I do not, personally.

Senator HARKIN. Do you know that?

Mr. CONAHAN. Yes; I believe he was stationed primarily at Ilopango.

Senator HARKIN. Lieutenant Colonel Rankin had an office at Ilopango?

Mr. CONAHAN. Yes, sir.

Senator HARKIN. Are you aware, Mr. Conahan, of a deposition taken of Mr. Rankin—of Lieutenant Colonel Rankin in the course of the Iran-Contra hearings?

Mr. CONAHAN. I have not read the deposition. I knew that there was a deposition taken from Colonel Steele. I am not really sure

that I can say, but I can confirm knowledge of the one taken with Colonel Steele.

Senator HARKIN. Do you know, Mr. Kozak, was there a deposition made of Lieutenant Colonel Rankin?

Mr. KOZAK. My understanding is that the independent counsel took a deposition of Colonel Rankin. This is what I am told. I have never seen the deposition. It is a classified deposition.

#### RELEASE OF DEPOSITIONS

Senator HARKIN. Why will not that deposition be released by the White House; do you know? I mean, is that where it is being held up so we cannot look at it? Did you ask to see the deposition?

Mr. CONAHAN. No; I do not believe we did. I had not heard of the deposition concerning Lieutenant Colonel Rankin until this conversation right here.

Senator HARKIN. But now that we know that there was a deposition taken?

Mr. KOZAK. I am saying it is my understanding one was taken by the independent counsel.

Senator HARKIN. And do you have any idea where that deposition is?

Mr. KOZAK. I assume the independent counsel has it if he took the deposition.

Senator HARKIN. Do you know if it is classified?

Mr. KOZAK. I am told it is classified.

Senator HARKIN. Can you make that deposition available to the committee?

Mr. KOZAK. Senator, I can look into it. With things involving the independent counsel, the question of executive branch authority to divulge their documents is not something that I am totally familiar with. And so I will have to see what is possible.

Senator HARKIN. For the record, I would request, Mr. Chairman, that Mr. Kozak find out about the deposition taken, of Lieutenant Colonel Rankin, or how ever many depositions there were, and whether or not, and why not, if not, that deposition could be made available to this committee.

Mr. KOZAK. I would be happy to do that, Senator.

Senator HARKIN. I would like to find that out.

[The information follows:]

Colonel Rankin was questioned in a sworn deposition on September 11, 1987 by Iran-Contra congressional investigators about his activities in El Salvador in 1984-87. We understand that the full text, classified version of Col. Rankin's deposition is in the custody of the SSCI. At the request of the SFRC, the Executive Branch recently conducted a classification review of Col. Rankin's deposition. We obtained the assurance of the SSCI that the unclassified version of the deposition is no longer a controlled document, so we are providing a copy of that deposition to you.

[The referred to information is being retained in subcommittee files.]

#### RESPONSIBILITIES OF COLONEL STEELE AND COLONEL RANKIN

Senator HARKIN. Well, in light of these responsibilities, if Colonel Steele and Lieutenant Colonel Rankin, who had an office at Ilopango, and since this was MAP fuel, it really, it just begs increduli-



ty to think that they were not aware at all of the transfer of this fuel to other than El Salvadoran aircraft.

Mr. McKALIP. Senator, I feel I have to speak for these men. I think that it is possible, given the circumstances at the time, with this arrangement having been entered into before the MAP funding of the fuel procured through the FMS system started; given their other duties, given the fact that these were U.S. registered aircraft, some of which who came in on U.S. Government charter, and then apparently performed this other charter while they were there; I think it is possible for them to have been unaware of the peculiar violation that occurred at the time.

Senator HARKIN. Mr. McKalip, that is just not so. First of all, let me just walk you through some of the documents that we do have.

Mr. McKALIP. You probably have access to ones I do not.

Senator HARKIN. They are all out in the public.

First, in Colonel North's notebooks, there is a reference to a September 10, 1985 meeting with Steele, North, and Donald Gray. North's notes associated with the meeting cite a proposed visit by Calero and Enrique Bermudez to Ilopango to set up logistical and maintenance support. Steele was in on that meeting.

Let us see, on September 16, 6 days after his entry on the North-Steele-Gray meeting, North wrote in his notebook, "call from Jim Steele-DelAmico." And that is Mario DelAmico, who is an arms merchant. "What about Felix help for aircraft maintenance?" That is in North's notebook. A call from Jim Steele.

On September 20, North wrote Felix Rodriguez asking him to secretly help with the servicing and maintenance of Contra-support aircraft using the Ilopango air base in El Salvador.

On December 19 North referred to another call from Steele stating, "OK on flights, fuel arrangements."

There is another call on January 6 referring to "additional request for six-man detail for C-123; \$10,000 initial downpayment."

On January 31 North, Steele, and Corr, former Ambassador Ed Corr meeting in Springfield, VA. And then we have the testimony of Richard Gadd in the Oliver North trial. Gadd indicates that Steele played an active role with the Enterprise, advising pilots on problems that came up working with Rodriguez, serving as a liaison between the supply operation and the U.S. Embassy.

It is also my understanding that Steele had a KL-43 encryption device, which Gadd, Secord, Quintero, Felix, and North used to communicate during these whole operations.

So there is the whole pattern. So to suggest that Colonel Steele was oblivious to what was happening to the fuel at Ilopango is just ridiculous. That somehow he has been having all of these meetings—read North's notes—and then you suggest he did not know anything about it. No; not at all.

And also I would like to see the deposition of Mr. Rankin, because I understand there may be some questions in there that concern this.

I would just ask Mr. McKalip, how do you explain all of that data and all of those meetings and all of the notes and stuff? Is it all nonsense, or what is it?

Mr. McKALIP. I appreciate your views. I was just trying to suggest a presumption that maybe it was not quite that clear at the

time. And unfortunately, that is my view. This is not a defense of what happened. We are obviously concerned about what happened; we changed our procedures. And we feel that we have a unique situation, and we feel that we have remedied it. And we believe that we will not have any further problems with it, either there or in other countries.

#### INADEQUACY OF STATE DEPARTMENT INVESTIGATION

Senator LEAHY. I was going to say, you did change your procedures, and I think that you should be complimented for that. But the GAO report said that the State Department investigation found no problem with the MAP fuel in El Salvador. Actually, anybody that had bothered to ask any parties involved in the Contra resupply effort could have found it out.

Now, Mr. Kozak, is that a fact, that the State Department did not make any real effort to find out whether there had been any use of the MAP fuel supply at Ilopango despite all of the reports? I mean you could pick up the newspaper everyday and read reports about the Contra resupply operation there.

Mr. KOZAK. Senator, in looking at the GAO report of this, which tracks with what little bit I recollected at the time, it said that initially the State Department did think that fuel may have been transferred without U.S. Government consent; and then was informed that, in fact, there were two sources of fuel at Ilopango; that a review by the MILGROUPE of the fuel expenditures from the MAP-funded fuel dump showed no noticeable or unusual increase in sales during that time, and that the people at that time concluded that therefore, they probably bought the fuel across the runway at the commercial side rather than at this side.

As it turned out, that was wrong. So it was not complete. I will say one thing just for my own sense at that time, when I was over in the legal office, about going to talk to people involved in the Contra resupply operation. This was in the middle of the Iran-Contra hearings, and we were being very careful not to go around talking to potential witnesses, either before the independent counsel or the Congress, for fear of being accused of trying to influence their story or something.

Now that should have been made clear, if it was not, to the Congress at the time. And I think it probably was not, that those people had not been interviewed, and therefore the conclusion that had been come to was based on a limited set of facts.

So I am not saying that with any idea of trying to defend or particularly to criticize that conclusion then. But I think that is about the picture of what was going on then.

Senator LEAHY. The reason I brought this up again is not so much because of this particular diversion of fuel or funds, but because we are going to be asking the State Department to give us reports of allegations of human rights abuses in El Salvador. I think of that case as an example of where there are going to be people who will say "Where is all this money going?" They have come up with an allegation that may or may not be well-founded.

And we will be asking the State Department for investigations. And when we get something back that says they have investigated

and either all is well or all is bad, we have to assume that an investigation has been done. I would hope you would pass the word pretty strongly, do not do something like this where the appropriate people to be spoken to were not even interviewed. What has been called an investigation, really was not.

#### CRITERIA OF VIOLATION

Now, Mr. Conahan, you concluded that this diversion was a substantial violation. One that had to be reported to the Congress and triggered penalties against the recipient country. Besides the fact that, at the time this misappropriation occurred, it was against the law to support Contra military operations, were there any other criteria that you applied that brought you to the conclusion that it was a substantial violation?

Mr. CONAHAN. The fact that the fiscal year 1986-87 foreign assistance authorization prohibited the use of any MAP funds from being used for military or paramilitary activities associated with the Contra operation at the time, we felt was a significant expression of the sense of the Congress, and that it was so clear that any use of those funds in support of military operations of the Contra organization, without regard to the amount, may very well constitute a substantial violation.

That is a determination of the Secretary of State. Our information is advisory in support of his determination.

Senator LEAHY. Well, let us make sure we are all talking about the same thing. Mr. Kozak, was this a substantial violation of the Arms Export Control Act?

Mr. KOZAK. Mr. Chairman, first, I am speaking here on the basis of a review done by the PM department, which is charged with these things worldwide, with monitoring the Arms Export Control Act. It is not really my jurisdiction. The review was done also by our legal section, in conjunction with the DSAA. I have a letter that is in the works to be coming up to the Congress to report.

I think, first, what they have concluded is that it was a violation, reportable under section 3(e), that is an unauthorized transfer to a third party without U.S. consent of defense articles and services. No question on that.

3(c) calls for reports when there may have been a substantial violation. That does not automatically trigger any kind of sanction. Whether to impose sanctions is a further determination that the President has to decide whether or not to make—or the Congress to decide whether or not to make, based on such a report.

The conclusion that was reached in this case was that this was not something reportable as a substantial violation, which is not to mean that the others are insignificant violations, but a substantial violation in terms of the gravity or quantity involved.

The basis, as I understand it, for that conclusion was one that the amount of fuel sold, relative to the total amount involved in the MAP program was not substantial.

Senator HARKIN. If I might interrupt there. I think it was five percent.

Mr. KOZAK. I think we had \$21 million, or something, of total funds going into this, and \$100,000 or \$109,000 being spent. I have



not translated that into gallons, but in dollar terms that was 100,000 going into—although for this—

Senator HARKIN. Well, you can use the \$801,000.

Mr. KOZAK. Of course, most of that came to us; the rest of that was fuel that was purchased by the U.S. Government, which is not Contrary to the Arms Export Control Act. It is not a third-party transfer.

#### POSSIBILITY OF PENALTIES AGAINST EL SALVADOR

Senator LEAHY. I do not remember off the top of my head, but does the act trigger any penalties against El Salvador as a result?

Mr. KOZAK. Only, Senator, if the President makes a determination to do so, or if the Congress determines to pass a joint resolution imposing such penalties. It is sort of three-tier procedure, you are to report information indicating violations of these retransfer provisions, third-party transfer provisions; we are doing that.

Second, there is a provision, section 3(c), where the Secretary of State characterizes a violation. If he characterizes it as one that may have been a substantial violation, he is supposed to report that to the Congress. But that does not automatically trigger anything. There is a further step, where the President, as I understand it, either makes a determination that a substantial violation, in fact, has occurred, and therefore, to impose penalties; or if the Congress, by means of a joint resolution, decides to do that.

Senator LEAHY. I may have some followup questions on that. Incidentally, the record will be kept open because Senator Kasten and other Members all have about a half a dozen other things this afternoon and obviously we will keep the record open for any questions they might have.

#### PROCESS OF REVIEWING VIOLATIONS

Mr. Conahan, when you referred to the 1986-87 authorization provisions, are those provisions that actually passed or are those ones that passed one body or the other of the Congress and never got signed into law?

Mr. CONAHAN. Oh, no, sir. They were part of the authorization as approved by the President.

Senator LEAHY. And, Mr. Kozak, this is now in the process of review as to what type of a violation this was?

Mr. KOZAK. I think the review is completed, so it is just in the process of getting the results of that review to you in a formal sense.

Senator HARKIN. That will determine what State wants to do to the response to the conclusions of the report.

Mr. KOZAK. In my understanding, we would report to you that, in our judgment, a violation has occurred, and the corrective actions that have been taken in response to that violation. And then there is this question of whether we could have also reported under 3(c) that a substantial violation may have occurred.

I think here, Senator, it will be instructive, to look at the past instances in which that provision has been invoked, versus the other one because I think you will see that for the most part it is pretty heavy stuff—using cluster bombs against civilian personnel



and things like that that have a gravity to them, or transfers of large amounts of equipment and deliberate-type transfers.

There are also some pretty heavy-duty ones that have been reported under 3(e), the section we are reporting under.

Senator HARKIN. What are you going to do about the \$800,000 that the El Salvadorans said they would offer to pay it?

Mr. KOZAK. At this point, Senator, I think we all share the concern of wanting to know as best we can where that went. I have been reassured by the information that DSAA was able to develop in looking at the Salvadoran accounts in this process that the money was credited to base operating accounts and not to somebody's pocket. Now, that is step one. And I think what we will want to do is to go back and ask for the further cooperation of the government of El Salvador.

Senator HARKIN. I wish the Government of El Salvador would cooperate with the GAO with trained auditors to follow the audit trail. I understand they would not show you the books, right? They would not show you these accounts?

Mr. CONAHAN. We did not ask to see these particular books that he is talking about right now, Senator.

Senator HARKIN. No; I am talking about the books that have seen some indications or some entries, Mr. McKalip, about where the money went.

Mr. KOZAK. Correct me if I am wrong, but my understanding is that what the GAO was not able to obtain was information relating to the Contra resupply activity.

Mr. CONAHAN. That is correct. Of the fuel transfers to the Contra organization, we did not ask the Salvadoran military establishment to see their budgetary records; the ones that these gentlemen are referring to.

What I did report earlier is that the MILGROUP commander in 1987 took a look at those books of account in April 1987 and reported that he had seen expenditures for base construction and other military operations.

When we queried him on the extent to which he verified that, he told us that he himself had not gone beyond the books that were made available to him.

Senator HARKIN. Who is that person?

Mr. CONAHAN. That would be General Ellerson.

Senator HARKIN. Was that Colonel Steele's replacement?

Mr. CONAHAN. Yes.

Mr. KOZAK. I think the upshot Senators is that we will go back and try to develop this information a little bit further.

If it appears that the money was spent for legitimate defense purposes, which is what MAP goes for in the first place, there is probably not—this is just at this point my immediate personal reaction—there is probably not too much to do about that.

If it was spent for something other than that that we wouldn't be approving, then we might want to explore further the Salvadoran offer to reimburse or something like that. But we need to get our facts straight first and then sit down and figure out what we do about it or think what we have got is a manifestation of a good attitude on their part of wanting to rectify any errors that have occurred in the past, and I am taking their statement about reim-

bursement as a manifestation of that attitude rather than as something that is discretely desirable. And, second, that if we can piece together a better picture of how those accounts work and be able to put it in a form that is usable to you, that we all have a good sense of it, and we will know where we are.

Senator HARKIN. Two observations on that. One, I am really bothered by the way Mr. McKalip and maybe even you, Mr. Kozak, refuse to accept the fact that these transfers are taking place in violation of the law. You say, well, it is fuel. Well, what if it was helicopters? What if they took a helicopter and sold it and used it to buy something else?

Mr. KOZAK. Senator, I was not trying to say that it was not disturbing, because it was fuel. Quite the Contrary. I was saying that we were struggling with the fact that fuel being an almost instantly convertible into cash commodity creates more of a monitoring problem than a helicopter or something where you can see if it disappears. That was my only point, not to try to minimize the importance of it.

Senator HARKIN. I understand exactly what you are saying now.

#### COMMUNICATIONS FROM AMBASSADOR CORR

Just one last thing that I wanted to just ask you, Mr. Kozak. Do you know, are you aware of any traffic between Ambassador Corr and the State Department here during the period of time in question in which he discussed Colonel Steel's involvement in this operation or with the Salvadoran Air Force?

Mr. KOZAK. Of State Department traffic?

Senator HARKIN. Yes.

Mr. KOZAK. Not offhand, Senator.

Senator HARKIN. If I am not mistaken, Steele reported to Ambassador Corr.

Mr. KOZAK. The ambassador is in charge of the entire Embassy mission, including MILGROUP.

Senator HARKIN. Was there any traffic, State Department traffic, between Ambassador Corr and headquarters here in which Steele's operations with the Salvadoran Air Force at Ilopango were discussed?

Mr. KOZAK. Senator, I cannot answer that one way or the other without going back through all the records, but I would say to the best of my knowledge, that was a subject that was gone into by the Iran Contra Committees at the time that they were operating.

And I believe the level of involvement by the MILGROUP and who knew about what was gone into there, and some conclusions were reached, but I am not sufficiently familiar, I have not read it recently, and so I would not want to say what it says.

Senator HARKIN. I am advised by my staff that it was not fully explored. Could you make available any traffic between State here in Washington and Ambassador Corr referring to Colonel Steele and his activities with El Salvadoran Air Force at Ilopango.

Mr. KOZAK. We will have to go back. That is a fairly wide scope of request.

Senator HARKIN. That is a pretty wide scope. I may write you and give you a little more detail.

Mr. KOZAK. If you could pinpoint it more, it would make it easier. I am not trying to resist the request.

Senator HARKIN. I will try to tie it down a bit more.

#### ACCOUNTABILITY FOR THE TRANSFERS

Mr. Chairman, the reason for my interest as well as yours and Senator Hatfield's has to do with accountability—who is accountable for these transfers, and clear violations of the law and whether or not the people involved in this can be held accountable or not and what has happened to the money—I just find it a little odd that all of a sudden, hey, we find out that within the past couple of days El Salvador wants to pay the money back? No.

It seems rather odd since it all revolves around General Bustillo, when he wants to be the head of the military of El Salvador. But I think Mr. Bustillo or General Bustillo has some questions to answer, I think, to this government for his stewardship of the military supplies that we put under his control during this period of time. That is why I believe that this is necessary to go into. And, Mr. Chairman, I want to thank you very much for allowing us this opportunity to further explore this.

#### ADDITIONAL COMMITTEE QUESTIONS

Senator LEAHY. There is a rollcall vote on, and we will keep the record open until the close of business tomorrow if other Senators want to submit questions. Certainly, if when any of the witnesses look over the transcript, and feel that there is additional material that we should have or if there is anything additional you wish to pass on to us, please send it to myself and Senator Kasten, and we will get it to the committee. And, Mr. McKalip, when you and Mr. Kozak go back to your respective departments, please, let them know that I will certainly have more than a passing interest in where the money is being spent down in El Salvador, whatever amount of money when it comes out of here. Certainly there are a lot of people in my State, as in all other States, who are wondering where this money is going.

When we are cutting back on all kinds of programs here in the United States, that does not mean we should automatically cut out foreign aid, however defined. But it certainly puts an even stronger burden on all of us who have oversight to make sure just where that money is going.

There is less and less of a constituency for foreign aid here on the Hill, and that constituency diminishes in a direct ratio to the extent that it cannot be accounted for.

Senator HARKIN. And lastly you are going to report to us on the deposition of Lieutenant Colonel Rankin and attempt to make that available to us?

Mr. KOZAK. What I am undertaking on that, Senator, is to find out whether it is available under what circumstances. I will do my best is what I am saying, but I cannot guarantee. We will let you know what the status of it is.

Senator HARKIN. As well as Bustillo's records.

Mr. KOZAK. Yes, sir.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]



## DEPARTMENT OF STATE ADDITIONAL COMMITTEE QUESTIONS

### MAP-FUNDED FUEL TRANSFERS

SENATOR LEAHY: Are you going to send a report to Congress that this is a substantial violation of the Arms Export Control Act? If you do, what are the penalties against El Salvador as a result?

MR. KOZAK: On June 30 the Department submitted a report to Congress advising that a violation of the retransfer provisions of the Letter of Offer and Acceptance, under which the fuel was provided to El Salvador, had occurred. Those in the Department charged with implementing the Act did not find the violation to be a substantial one and therefore reported it under section 3(e) of the Arms Export Control Act.

SENATOR LEAHY: If you don't send a report that this is more than a technical violation, how can you justify that? Is the State Department not concerned that over \$100 thousand in MAP assistance was misused, and that nearly \$700 thousand is unaccounted for?

MR. KOZAK: Those responsible for implementing the Act determined that neither the quantity of fuel transferred or the consequences of the transfers suggest that a substantial violation occurred. First, the quantity (approximately 61,000 gallons) and dollar value of this fuel (approximately \$100 thousand), compared to the \$120 million and \$110 million in MAP provided to El Salvador during fiscal years 1986 and 1987, respectively, are relatively insubstantial. Second, the consequences of the transfers do not appear to have been significant. For example, the fuel sold to aircraft flying resupply operations for the Nicaraguan Resistance did not sustain the resupply effort over an extended period of time. In addition, the fuel (which was sold roughly at or above market rates) could have been obtained from commercial sources. Also, fuel is an expendable supply item, not lethal hardware, which might present a greater risk of adverse consequences.

The transfers appear to have been inadvertent, rather than a deliberate attempt by the Salvadoran Air Force to circumvent U.S. retransfer restrictions.

In response to these events, the Salvadoran government, though under no obligation to repay us for the 61,000 gallons illegally transferred, has offered to make repayment in kind by providing U.S. military planes approximately \$100 thousand of aviation gas without charge. Arrangements to this effect have already been implemented at Ilopango Air Force Base in San Salvador. In order to prevent such unauthorized transfers in the future, the Departments of State and Defense are working on a Memorandum of Understanding governing third party transfers to be signed by the U.S. and Salvadoran governments.

I would note that the Administration's conclusion that this violation warranted reporting under section 3(e) of the Act is

consistent with past practice under the reporting provisions of the Act. The Committee has been provided a summary of reports made under both sections 3(c) and 3(e) over the past decade.

SENATOR LEAHY: Did any Salvadoran government official discuss the GAO investigation with any officials of the Department of State while the investigation was pending?

MR. KOZAK: No, not to the best of my knowledge.

SENATOR LEAHY: The GAO found no evidence that any U.S. government personnel were aware of these transfers. What effort has the Department made to determine if that was in fact the case? Have you conducted any internal investigation or review to find out how this could have gone on without anyone in the U.S. Embassy or Military Group in El Salvador being aware?

MR. KOZAK: The Embassy, in reviewing Military Group procedures governing provision of MAP-funded fuel to the Salvadoran Air Force, found no evidence that any member of the Embassy, including the Military Group, was aware of the unauthorized transfers. The allegations of fuel transfers which were first made in 1987 did not mention any U.S. government personnel involved in the transfers. The fact that Embassy personnel were unaware of these unauthorized transfers is regrettable but understandable, since it would be impractical to station Military Group representatives to monitor the fuel pumps at the Salvadoran Air Force Base. State and Defense are working on a Memorandum of Understanding which will tighten up control over MAP-funded fuel, to reduce the likelihood of unauthorized transfers in the future.

SENATOR LEAHY: What did you in the State Department do when you learned from GAO that this had happened? Did you take any steps whatsoever respecting El Salvador to make U.S. displeasure known? Did we demand restitution from the Salvadoran Air Force for the diverted fuel?

MR. KOZAK: The Ambassador discussed the issue with the Minister of Defense, and did make our government's displeasure clear. The Ambassador pointed out the clear-cut violation of the Letter of Agreement governing the provision of MAP-funded fuel. The Defense Minister, in recognition of the seriousness of the matter, offered to pay us the approximately \$100 thousand the Salvadoran Air Force received for the fuel sold to the Nicaraguan Resistance and, as indicated above, repayment in kind arrangements have already been instituted.

SENATOR LEAHY: Did you demand a full accounting for the missing \$700 thousand from the Salvadoran Air Force?

MR. KOZAK: The Salvadoran Air Force has told us that our payments for fuel were credited to the Air Force operating account and were commingled with Salvadoran government funds. The Embassy has also requested the government of El Salvador to make available to us the operating accounts of the Salvadoran Air Force, so that we can attempt to determine, if possible, how the approximately \$700 thousand we paid the Salvadoran Air Force for fuel was spent.

## QUESTIONS SUBMITTED BY SENATOR TOM HARKIN

### MAP-FUNDED FUEL TRANSFERS

SENATOR HARKIN: Please provide this subcommittee a list of checks written by the U.S. Government to the Salvadoran Air Force in payment for U.S. - MAP purchased fuel from tanks at the Ilopango Air Base in San Salvador. Please provide this subcommittee records or reports by the U.S. Embassy on the use of those funds derived from the sale of U.S. - MAP purchased fuel by the Salvadoran Air Force. (And the records of the ESAF if they are available).

MR. KOZAK: We are in the process of obtaining copies of the checks issued to the Salvadoran Air Force by the U.S. government to purchase the fuel. The checks were issued by two different financial centers. From August 1985 (the date of the first fuel purchase) to November 1986, the Embassy sent Salvadoran Air Force vouchers to the State Department, which then issued checks to the Salvadoran Air Force. From December 1986 to April 1987, when the payment procedure was changed, the vouchers were processed and checks issued by the State Department's Regional Financial Center in Mexico City.

In order to trace the cancelled checks, the voucher numbers are necessary. The only record of the voucher numbers is maintained by the Embassy. The voucher records for August, September, and October 1985 were destroyed in the October 1986 earthquake in San Salvador and we therefore are unable to trace checks issued during those months. The Department is now checking its records to determine if we still have a record of those checks issued by the Department for the period November 1985 to November 1986. Mexico City reports that the checks it issued to the Salvadoran Air Force for the period December 1986 to April 1987 were issued in colones (the Salvadoran currency) and were drawn on an account with the Banco Cuscatlan in San Salvador. Because the checks were in colones, after the checks were endorsed and cashed by the Salvadoran Air Force, the bank returned the checks to Mexico City, rather than to the U.S. Treasury, as would have been the case with dollar checks. Mexico City has already destroyed the cancelled checks, in accordance with records disposition guidelines. The only remaining possibility of obtaining copies of the checks is to ask the Banco Cuscatlan if it has photocopies of the checks and if so, if it would be willing to provide the Embassy with copies. The Embassy has approached the bank in this regard.

With respect to the use of the funds paid to the Salvadoran Air Force, our information is limited. As the GAO report mentions, in early 1987, when the U.S. Military Group in El Salvador changed payment procedures from cash payment to transfer of payment to the FMS trust fund account, the Military Group commander was shown Salvadoran Air Force records indicating that the payments had been used for the construction of Air Force facilities and other operational requirements. In April of this year a Defense Security Assistance Agency (DSAA) team reviewed Salvadoran Air Force records in El Salvador which also indicated that the payments for fuel from the U.S. government and third

party purchasers had been credited to the general operating account of the Salvadoran Air Force. Because the issue of how the Salvadoran Air Force spent the U.S. Government funds did not come up until later, the DSAA team did not pursue the matter. We have asked the Salvadoran government for access to the Air Force's operating records to determine to the extent possible how those funds were spent.

SENATOR HARKIN: Please provide this subcommittee all cable traffic from the U.S. Embassy in San Salvador to the Department of State in Washington regarding reporting on the Contra resupply operation at Ilopango. Those cables should cover the period from September 1985 to October 1986.

MR. KOZAK: We are in the process of searching the archives for such cables.

SENATOR HARKIN: What is the status of the current Salvadoran Defense Minister, General Larios? How permanent is his appointment? Who were -- and are -- contenders for the position as Salvadoran Minister of Defense? Is it not correct that one of those contenders is the head of the Salvadoran Air Force, General Bustillo?

MR. KOZAK: Prior to General Larios' selection, General Bustillo was considered a candidate for the position, as was Chief of Staff Col. Ponce. All Cabinet ministers, including Gen. Larios, serve at the pleasure of the President.

SENATOR HARKIN: What actions has the Department of State undertaken -- and what actions does the Department plan to undertake -- in response to the conclusions of the General Accounting Office? Will the Department report that a substantial violation of the Arms Export Control Act, under section 3(e), did occur, as the GAO recommended to the Department in its report?

MR. KOZAK: On June 30 the Department submitted a report to Congress advising that a violation of the retransfer provisions of the Letter of Offer and Acceptance, under which the fuel was provided to El Salvador, had occurred. Those in the Department charged with implementing the Act did not find the violation to be a substantial one and therefore reported it under section 3(e) of the Arms Export Control Act.

Those responsible for implementing the Act determined that neither the quantity of fuel transferred or the consequences of the transfers suggest that a substantial violation occurred. First, the quantity (approximately 61,000 gallons) and dollar value of this fuel (approximately \$100 thousand), compared to the \$120 million and \$110 million in MAP provided to El Salvador during fiscal years 1986 and 1987, respectively, are relatively insubstantial. Second, the consequences of the transfers do not appear to have been significant. For example, the fuel sold to aircraft flying resupply operations for the Nicaraguan Resistance did not sustain the resupply effort over an extended period of time. In addition, the fuel (which was sold roughly at or above market rates) could have been obtained from commercial sources. Also, fuel is an expendable supply item, not lethal hardware, which might present a greater risk of adverse consequences.



The transfers appear to have been inadvertent, rather than a deliberate attempt by the Salvadoran Air Force to circumvent U.S. retransfer restrictions.

In response to these events, the Salvadoran government, though under no obligation to repay us for the 61,000 gallons illegally transferred, has offered to make repayment in kind by providing U.S. military planes approximately \$100 thousand of aviation gas without charge. Arrangements to this effect have already been implemented at Ilopango Air Force Base in San Salvador. In order to prevent such unauthorized transfers in the future, the Departments of State and Defense are working on a Memorandum of Understanding governing third party transfers to be signed by the U.S. and Salvadoran governments.

I would note that the Administration's conclusion that this violation warranted reporting under section 3(e) of the Act is consistent with past practice under the reporting provisions of the Act. The Committee has been provided a summary of reports made under both sections 3(c) and 3(e) over the past decade.

## DEFENSE SECURITY ASSISTANCE AGENCY ADDITIONAL COMMITTEE QUESTIONS

**QUESTION:** AT WHAT POINT DID THE DEFENSE SECURITY ASSISTANCE AGENCY BECOME INVOLVED IN THIS INVESTIGATION?

**ANSWER:** DSAA initially became involved in this investigation when it was requested by the State Department to review a draft response to Senator Harkin's 25 November 1987 letter on the subject. We reviewed the draft response and, based on discussions with the USMILGP, provided recommended changes to the State proposed response. Our discussions with the USMILGP noted the existence of two AVGAS fuel sources at Ilopango AB and that there appeared to have been a pattern of fuel consumption during the period discussed in the Harkin letter that was consistent with other time periods.

**QUESTION:** YOU ARE RESPONSIBLE FOR THE MILITARY ASSISTANCE PROGRAM. WHAT CONTROLS DID YOU HAVE IN PLACE AT THE TIME TO PREVENT SUCH ABUSE? SUCH CONTROLS, IF ANY, WERE OBVIOUSLY INADEQUATE.

**ANSWER:** As with all FMS purchases, DoD control of the contracting for and delivery of the FMS procured fuel to El Salvador was maintained entirely through US channels up to the point of transfer of the commodity to the recipient country. Accordingly, the Defense Fuels Supply Center (DFSC) solicited the fuel contract in accordance with applicable provisions of the Federal Acquisition Regulation (FAR). The US government maintained control through the mechanism of a contracting officer representative at the USMILGP who is responsible for validating the actual delivery of fuel and recording it on a DD Form 250 (Record of Delivery). As demonstrated to the GAO, the USG maintains detailed records of procurement and delivery of fuel to El Salvador.

Under FMS procedures the USG acts as a purchasing agent for the requesting country. Accordingly, FMS procedures are designed to ensure that the customer receives the items requested, at the best price, in complete form as requested, and delivery to the country-designated receiving point or agent. In this case delivery was complete at the time fuel was delivered to the designated Salvadoran fuel point. At this time title to the item(s) purchased transfers

to the receiving country. At this time control and accountability of the item also passes to the host country.

As noted in this discussion, unlike security assistance financed commercial contracts, the FMS system is designed to preclude fraud and abuse of funds and assets in the procurement and delivery of FMS procured items. This system is not designed as an inventory control system after delivery and transfer of title of FMS procured items. This said, the US government continues to monitor host country operations and usage of FMS procured equipment to the extent possible. Personnel manning constraints preclude our ability to monitor all activities and attention is usually directed to major component items such as weapons, aircraft, vehicles, etc.

After delivery of FMS defense articles and services, each government-to-government contract commits the recipient government to refrain from any transfer of title to (or possession of) these items without the prior written consent of the USG. The Presidential authority to consent to such transfers is delegated to the Secretary of State. —

At the time of the transfer of AVGAS fuels to the Contras the USMILGP and DSAA believed that the Salvadoran Air Force was concurrently purchasing AVGAS fuel with their own funds. Accordingly, there was no reason to believe that any improper transfer of fuel was taking place. As noted by the GAO, the AVGAS purchase arrangement between the Contra Supply Network and the Salvadoran Air Force was initiated on or about 1 June 1986. At that time all AVGAS fuel delivered to Ilopango AB was purchased with Salvadoran Air Force funds. This was over two months prior to the first delivery of FMS procured AVGAS fuel on 16 August 1986. At the time the third-party transfer of AVGAS fuel occurred (Aug/Sep 86), we (DoD and USMILGP) were not aware that the Salvadoran Air Force had discontinued the purchase of AVGAS fuel with its own funds. The USG has no authority to monitor Salvadoran purchases with Salvadoran national funds in Salvadoran hands.

QUESTION: WHAT STEPS HAVE YOU TAKEN SINCE THIS EPISODE TO ENSURE THAT MAP FUELS ARE NOT SIMILARLY MISUSED ELSEWHERE?

As a result of the situation in El Salvador, we have taken specific steps in El Salvador to reinforce the prohibition on unauthorized third party transfers by direct discussions with the Salvadoran Air Force and increased guidance to the MAC manager at Ilopango. We are completing a Memorandum of Agreement (MOA) which specifically delineates reimbursement procedures for fuel transfers to US aircraft and procedures for US monitoring of fuel deliveries and issues.

We have directed our SAOs in each of the other countries where we provide fuel to review fuel issue procedures and accountability of FMS procured fuels to ensure that no unauthorized transfers occur. The prohibition on unauthorized third party transfer of fuel has been reinforced by the SAO office. With the Salvador MOA as a model, we are reviewing the applicability/necessity of similar agreements in these countries.

QUESTION: I SEE IN THE GAO REPORT THAT DSAA BECAME CONCERNED ABOUT CASH PAYMENTS TO THE SALVADORAN AIR FORCE BY THE US AIR FORCE FOR FUEL AT ILOPANGO, TOTALING OVER \$680,000. YOU INSISTED FUTURE PAYMENTS GO INTO A SALVADOR ACCOUNT IN THE FMS TRUST FUND SO THEY COULD BE CONTROLLED. I CONGRATULATE DSAA FOR THIS STEP, ALBEIT BELATED. WERE YOU SUSPICIOUS OF WHAT THE SALVADORANS WERE USING THE MONEY FOR?

ANSWER: In early 1987 it first came to DSAA's attention that the Salvadoran Air Force was being paid cash for the fuel which it sold to the US government to support USG aircraft. Our review of the applicable laws indicated that title to the fuel passed to the

Salvadoran government at the time of delivery. Accordingly, the Salvadoran government was legally entitled to the proceeds of any authorized transfer of the fuel. The sale of the fuel was deemed as a proper transfer (i.e. second party to first party). Our concern at that time was twofold.

The first concern, shared by your committee, was that MAP funds were, in an entirely legal manner, being converted, shortly after delivery, to unrestricted cash. While this was deemed legal, we had reservations as to whether this was an acceptable policy.

The second concern was that the funds were being received by the Salvadoran Air Force, rather than the Ministry of Defense (MOD). We felt that as the representative of the Government of El Salvador for defense activities was the MOD, these funds should be channeled such that the MOD had decision authority over the funds rather than simply the Salvadoran Air Force. Our objective was to ensure that they were reobligated to valid defense requirements consistent with other purchases through the FMS program.

In reviewing the available options, the transfer of such funds to the FMS trust account provided a mechanism for legitimate reimbursement to the Salvadorans for the USG purchase of a Salvadoran item (title transfer at delivery) and also placed the funds where the MOD could direct the usage of the funds and the USG could monitor this usage.

Responding specifically to your question, there was no indication at that time or since that there had been any improper use of the funds. As reported by the GAO, the USMILGP commander was shown Salvadoran records (in early 1987) that the funds had been used for facilities repairs/improvements to Salvadoran Air Force facilities. We had no reason to doubt this information, but instituted revised payment procedures for the above reasons.

**QUESTION:** DOES DSAA ACCEPT ANY RESPONSIBILITY FOR TRACKING THE MISSING \$680,000? WHAT HAVE YOU DONE THROUGH YOUR OWN MILITARY GROUP CHANNELS TO ACCOUNT FOR THAT MONEY-- AND I DON'T MEAN JUST ASKING GENERAL BUSTILLO WHAT HE DID WITH IT. I MEAN A GENUINE AUDIT OF ACCOUNTS AND RECEIPTS AND TRACKING OF THE MONEY.

**ANSWER:** DSAA dispatched a team in April 1989 to review available records to corroborate information provided to DSAA by the GAO. During this review, and in coordination with the USMILGP, our man was shown records indicating that the funds received from the sale of fuels, both to the USG and third parties, has been credited to the general operating account of the Salvadoran Air Force. There were no indications of diversion of these funds. As the team's mission was to corroborate the third party transfer of fuel to the Contras, additional information concerning the Air Force budget was not sought. It was not until the June hearings that a question was raised on the specific expenditure of such funds by the Salvadoran Air Force after the funds entered the Air Force operating budget. Because the funds received from the Salvadoran Air Force sale of fuel were co-mingled within the Salvadoran Operating Account, a full audit of the Salvadoran Air Force budget appears to be necessary to obtain the information you have requested.

DSAA is cooperating with the State Department in requesting the Government of El Salvador make the appropriate records available to the USG for review. The sensitivity of this issue and a number of internal issues related to the recent change of administration in El Salvador have complicated this request. We will continue to seek a complete and detailed resolution of this matter and will provide it to the Congress.

## QUESTIONS SUBMITTED BY SENATOR TOM HARKIN

**QUESTION.** DESCRIBE IN DETAIL THE RESPONSIBILITIES OF COLONEL STEELE DURING HIS TENURE AS HEAD OF THE MILGROUP IN EL SALVADOR.

**ANSWER.** Following are the duties and responsibilities of the US Military Group Commander in El Salvador. This information is provided from the duty position as defined by the US Southern Command, which is responsible for supervision of the USMILGROUP in El Salvador:

### COMMANDER U.S. MILITARY GROUP

1. Represents the Secretary of Defense, through the Commander in Chief, the United States Southern Command, with the host government. Functions as military consultant to the host country armed forces at the MOD/Service Command levels. Provides U.S. military presence in Host Country.
2. Directs the entire United States military effort, less attache matters, with respect to the International Security Assistance Program. Performs logistics management, fiscal management and contract administration of country programs to include supervision of the activities of other Department of Defense personnel temporarily in-country. Performs accounting and other management functions as directed by legislation and by executive orders and directives relating to the administration of security assistance and foreign military sales. Provides country input to Joint Strategic Planning Document (JSPD) and the Annual Integrated Assessment for Security Assistance (AIASA).
3. Serves as advisor to the United States Ambassador on all military matters, less attache matters. Advises the Ambassador on current Security Assistance programs and activities and expected impact of proposed plans and activities in relation to host development plans. Assists the Ambassador in preparation of emergency evacuation plans, internal defense plans, etc. Develops plans and programs in conjunction with the country team and assists in the preparation of assessments and Ambassador's goals and objectives. Serves as a full member of the country team.
4. Coordinates U.S. military activities with other U.S. government agencies and host country authorities, supervises continuing training and orientation of assigned/attached military personnel on the in-country situation and on programs of other U.S. agencies.
5. Maintains close liaison with the host country military to foster a friendly relationship based on professionalism. Makes periodic visits to host units and installations. Participates in host country military ceremonies and representational activities.

**QUESTION.** HOW MANY ASSISTANTS DID COL STEELE HAVE AT THE TIME OF HIS SERVICE IN EL SALVADOR AND HOW MANY WERE ASSIGNED TO ILOPANGO AB?

**ANSWER.** During COL Steele's duty in El Salvador, the USMILGROUP consisted of a total of 15 US personnel: 13 military and 2 civilians. The personnel were as follows:

|                                |                          |
|--------------------------------|--------------------------|
| MILGROUP Commander:            | Colonel                  |
| Dep MILGROUP Cmdr:             | Lieutenant Colonel       |
| Personnel Officer:             | Lieutenant               |
| Intelligence/Security Officer: | Lieutenant Colonel       |
| Operations Officer:            | Major/Lieutenant Colonel |
| Logistics Officer:             | Major                    |
| Training Officer:              | Major                    |
| Asst Training Officer:         | Major                    |
| Air Force Section Chief:       | Lieutenant Colonel       |
| Navy Section Chief:            | Commander                |
| Operations Sergeant:           | Sergeant First Class     |
| Intelligence Sergeant:         | Sergeant First Class     |
| Administrative NCO             | Sergeant First Class     |
| Administrative Personnel (2)   | Civilians                |



During COL Steele's tenure, up to 55 military trainers were authorized to be deployed to El Salvador at any one time. Total trainers averaged 45-50 personnel at any one time. These personnel were routinely assigned to work with specific Salvadoran units or staff functional areas. An average of three to four military trainers were assigned whose principal duty station would have been Ilopango. These personnel included the MILGROUP Air Force Section Chief and military trainers working in the aviation logistics and training programs.

What is the status of Col. James Steele's prospective promotion? Has the Department of Defense initiated any investigation into allegations of Colonel Steele's involvement with the private Contra resupply operation at Ilopango during his service as head of the MILGROUP in El Salvador? If so, what is the status of that investigation?

The Army Inspector General recently completed a Report of Investigation concerning an allegation of impropriety by Colonel Steele. The allegation that Colonel Steele failed to conduct himself with integrity during testimony before the Congressional Committees investigating the Iran-Contra Affair was unsubstantiated. The decision whether to renominate Colonel Steele for Promotion to Brigadier General is pending. The Army is unaware of any other Department of Defense investigation concerning Colonel Steele.

### GENERAL ACCOUNTING OFFICE ADDITIONAL COMMITTEE QUESTIONS

- 1.Q. Your report suggests that it was relatively easy to determine that MAP-funded fuel had in fact been misappropriated. Is that a fair statement? How long did it take you to determine that?
- A. We did not encounter any specific difficulty in obtaining the information required to confirm that MAP-funded fuel had been transferred to the Contra supply operation. To avoid confusion, we would prefer to use the phrase "transferred without U.S. consent" rather than "misappropriated" because the latter implies a misuse of appropriated funds. We found no evidence to suggest this.

We confirmed the transfers by reviewing various documents and interviewing knowledgeable officials about refueling activities at Ilopango Air Base. The Iran-Contra report confirmed that Contra resupply flights occurred between February and September 1986. Based on information provided by the manager of the civilian side of Ilopango Air Base, fuel suppliers in San Salvador, former U.S. military group officials and others, we were able to establish that Contra supply aircraft refueled on the Salvadoran Air Force side of the base when fuel tanks contained only MAP-funded fuel. Records submitted by Mr. Felix Rodriguez, a private individual supporting the supply operation, to the Congressional committees investigating the Iran-Contra affair in 1987 enabled us to identify the specific dates and quantities for refuelings at Ilopango.

We began detailed audit work in December 1988. By January 1989, we had compiled sufficient information to confirm the transfer of MAP-funded aviation gas to the Contra supply operation and other third parties. In February 1989, we received information from Southern Air Transport that Contra supply aircraft also refueled with commercial jet fuel at Ilopango Air Base. Because these refuelings occurred during the time that the Salvadoran Air Force tanks contained only

MAP-funded fuel, we were able to confirm these transfers as soon as we received the Southern Air data.

2.Q. You concluded that this was a "substantial" violation, which must be reported to the Congress and triggers penalties against the recipient country. Besides the fact that at the time this misappropriation occurred it was against the law to support Contra military operations, were there any other criteria you applied to reach the conclusion that it was a "substantial" violation?

A. During the hearing, I did not state a conclusion that a substantial violation had occurred, but rather presented our views as to why we believed that a substantial violation may have occurred. The GAO does not have the authority to make the determination that a transfer of MAP-funded items may have constituted a substantial violation of a foreign military sales (FMS) agreement. That authority has been delegated to the Secretary of State. The information we have presented is advisory to the Secretary.

Section 3 of the Arms Export Control Act (22 U.S.C. 2751) states that a violation involving an unauthorized third-party transfer may be substantial "either in terms of the quantities or in terms of the gravity of the consequences regardless of the quantities involved." We developed our view that a substantial violation may have occurred based on a review of the gravity of consequences. The transfer occurred when the U.S. government was legally prohibited by the International Development Security and Cooperation Act of 1985 from using military assistance funds, directly or indirectly, to support Contra military or paramilitary operations. Thus, even if the Salvadoran government had requested U.S. consent, granting such consent would have been inconsistent with the prohibition on providing indirect assistance to the Contras.

Further, the Intelligence Authorization Act For Fiscal Year 1986 and the Department of Defense Appropriation Act of 1986 prohibited the use of any funds to support Contra military or paramilitary operations except to provide intelligence support. These prohibitions would have prevented the United States from supplying fuel itself to the Contra supply operation. Lastly, we note that the unauthorized transfer resulted in the use of military assistance funds to support Contra military operations, indirectly circumventing the intent of Congress. We believe that these factors significantly increased the gravity of consequences of the transfer.

I would like to make it clear that GAO has no authority under section 3(c)(1)(A) of the Arms Export Control Act to make a determination that a substantial violation may have occurred. That authority has been delegated to the Secretary of State. However, GAO does have the authority to audit and evaluate the implementation of most Federal programs, including programs authorized by the Arms Export Control Act. See 31 U.S.C. 712-717. Under this authority, GAO is responsible for advising the Congress and executive branch agencies of its view of the legality, propriety and efficiency of the implementation of Federal programs. It is under this authority, not the Arms Export Control Act, that we are presenting our views as to why we believe that a substantial violation may have occurred.

3.Q. Your report says you found no evidence that any U.S. government personnel approved or were aware of the transfers.

Do you have any evidence to suggest the opposite, that is, that U.S. government personnel were not aware? Isn't it more accurate to say you do not have evidence that U.S. government personnel either were or were not aware of the diversion, except a disavowal by members of the Military Group from the Embassy?

- A. We found no evidence to suggest that any U.S. government personnel were or were not aware of the transfers.
- 4.Q. I gather we know how much MAP-funded fuel was transferred to the Contra supply operation. But am I right that we don't know the total amount that was misappropriated because we don't know how much fuel was sold or given to private and foreign government parties? Do we know how much MAP fuel could have been misused or transferred without U.S. consent? Is there any way you can make a general estimate? Is it possible this is only the tip of the iceberg as far as misuse or lack of accountability for MAP fuel in El Salvador?

- A. As stated on page 2, we prefer to use the term "transferred without U.S. consent" rather than "misappropriated". We do not know the total amount of MAP-funded fuel transferred without U.S. consent to third parties because we were unable to obtain specific details on the transfers to private and foreign government parties.

We also do not know how much MAP fuel could have been transferred to third parties without U.S. consent and do not have adequate information to make a general estimate. To make a general estimate, we would need to subtract the quantity of fuel used by Salvadoran Air Force and U.S. government aircraft since 1985 from the total quantity of fuel provided. The information we have on fuel sold to refuel U.S. government aircraft does not reflect total quantities because embassy records for certain periods in 1985, 1986 and 1987 were incomplete. The lack of complete data would make it difficult to develop a reliable estimate of the quantity of fuel that could have been misused or transferred. Thus, we are unable to state that the unauthorized transfers to the Contra supply operation and other third parties are only the "tip of the iceberg".

# MEMORANDUM FROM THE GENERAL ACCOUNTING OFFICE

Date: July 28, 1989

To: Director, Security and International Relations  
Issues, NSIAD--Joseph E. Kelley

From: Associate General Counsel, OGC--Robert H. Hunter *ML*

Subject: Review of Salvadoran Fuel Transfers--B-234033

This memorandum documents the advice previously provided to you and your staff regarding the legal implications of transfers of fuel by the Salvadoran military to various parties, including aircrews involved in private operations to resupply the Nicaraguan Resistance in 1986. The fuel was supplied to the Salvadorans through the Foreign Military Sales program.

## I. BACKGROUND

The following facts have been developed by NSIAD staff. During 1986, the Salvadoran military received aviation and commercial jet fuel through the Foreign Military Sales (FMS) program. The fuel was procured with Military Assistance Program (MAP) funds transferred to El Salvador's FMS account pursuant to section 503(a)(3) of the Foreign Assistance Act (FAA), 22 U.S.C. § 2311(a)(3). The fuel was delivered into tanks at the Salvadoran Air Force base at Ilopango. The first delivery of MAP-funded, FMS-procured commercial jet fuel was in August of 1985. The first delivery of MAP-funded FMS-procured aviation fuel was in August of 1986.

From February through September of 1986, the Salvadoran military sold fuel from these tanks to aircrews flying privately funded supplies to the Nicaraguan Resistance. Based on its analysis of fuel inventories, the NSIAD staff has concluded that MAP-funded fuel was used to refuel aircraft used in resupplying the Resistance.

Additionally, the Salvadoran military has sold and continues to sell MAP-funded, FMS-procured fuel to U.S. military aircrews and to aircrews of U.S. Government contract aircraft. Further, on some occasions, private and foreign government aircraft have been refueled.

The cash receipts from fuel sales to the Resistance resupply and American aircrews were retained by the Salvadoran military. In April, 1987, due to DOD concern about the disposition of funds being generated by these cash sales, U.S. military aircrews began providing receipts rather than cash for the fuel. These receipts are redeemable for credits to El Salvador's FMS trust fund account.

The Salvadorans neither requested nor received American consent for transfer of the MAP-funded, FMS-procured fuel to the Resistance resupply aircraft and other parties.

## II. LEGAL ISSUES: ARMS EXPORT CONTROL ACT

A. The Law. The Arms Export Control Act (AECA) in section 3(a)(2), 22 U.S.C. § 2753(a)(2), requires that a recipient of materiel supplied under the FMS program agree not to transfer that materiel to a third party without U.S. consent:

"No defense article or defense service shall be sold or leased by the United States Government under this Act to any country or international organization . . . , unless--

"(2) the country or international organization shall have agreed not to transfer title to, or possession of, any defense article or related training or other defense service so furnished to it . . . to anyone not an officer, employee, or agent of that country or international organization . . . and not to use or permit the use of



such article or related training or other defense service for purposes other than those for which furnished unless the consent of the President has first been obtained. . . ."

Section 3(c)(1)(A) of the AECA, 22 U.S.C. § 2753(c)(1)(A), sets forth penalties for "substantial" violation of the third-party transfer restriction:

"No credits (including participation in credits) may be issued and no guaranties may be extended for any foreign country under this Act as hereinafter provided, if such country uses defense articles or defense services furnished under this Act, or any predecessor Act, in substantial violation (either in terms of quantities or in terms of the gravity of the consequences regardless of the quantities involved) of any agreement entered into pursuant to any such Act . . . (ii) by transferring such articles or services to, or permitting any use of such articles or services by, anyone not an officer, employee, or agent of the recipient country without the consent of the President. . . ."

Section 3(c)(2), 22 U.S.C. § 2753(c)(2), requires a Presidential report to Congress when such a violation "may have occurred":

"The President shall report to the Congress promptly upon the receipt of information that a violation described in paragraph (1) of this subsection may have occurred."

Section 3(c)(3)(A), 22 U.S.C. § 2753(c)(3)(A), provides for imposition of penalties when the President or Congress "so determines":

"A country shall be deemed to be ineligible under subparagraph (A) of paragraph (1) of this subsection . . . if the President so determines and so reports in writing to the Congress, or if the Congress so determines by joint resolution."

Even when the requisite determinations are made, waiver of the penalties by the President is possible under section 3(c)(3)(B), 22 U.S.C. § 2753(c)(3)(B), for national security reasons.

Finally, section 3(e), 22 U.S.C. § 2753(e), which duplicates to some degree section 3(c)(2), requires the President "immediately" to report to Congress when he receives information that a third party transfer has taken place without his consent:

"If the President receives any information that a transfer of any defense article, or related training or other defense service, has been made without his consent as required under this section . . . he shall report such information immediately

to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate."

B. Sale of the FMS-procured fuel to Resistance resupply crews without U.S. consent. It appears that the Salvadorans transferred FMS-procured fuel to the Resistance resupply aircrews without the consent of the President. Nonetheless, because foreign governments are not subject to U.S. law, it would be imprecise to conclude that the Salvadorans violated the Arms Export Control Act. The legal relationship between the U.S. and El Salvador regarding the fuel is governed wholly by the FMS agreement.

Annex A, Section B9 of the pertinent FMS agreement, DD Form 1513, implements the third party transfer restriction of Section 3 of the AECA:

"[The Purchaser shall not] transfer title to, or possession of, the defense articles, components, and associated support material, related training or other defense services (including any plans, specifications or information) furnished under this Offer and Acceptance to anyone not an officer, employee or agent of the Purchaser (excluding transportation agencies), and shall not use or permit their use for purposes other than those authorized by B.8. above, unless the written consent of the USG has first been obtained."

We conclude, and the Departments of Defense and State informally concur, that El Salvador violated the third party transfer restriction in the FMS agreement by transferring FMS-procured fuel to the Resistance resupply aircrews without U.S. consent.

Reporting under Section 3(c)(2). Section 3(c)(2) of the AECA requires a report by the President to Congress upon receipt of information that a violation "described in paragraph 1" may have occurred. "Paragraph 1" refers to section 3(c)(1), which describes transfers "in substantial violation" of the pertinent agreement. Accordingly, the President under section 3(c)(2) must report only when "substantial" violations may have occurred. NSIAD's draft report, after consultation with OGC, recommended that the Department of State, to which the authority to report that substantial violations may have occurred had been delegated, determine whether a substantial violation report should have been made in this case. In responding to NSIAD's draft report, the Department of State took the position that this is not a "substantial violation" because of the limited quantities involved and the "technical" nature of the violation. The Department of Defense informally has taken the same position. The recommendation in the draft report, accordingly, was dropped.

In the past, GAO has been hesitant to take a position on whether or not a violation is "substantial." B-125085, October 7, 1974, reprinted in 120 Cong. Rec. 34616, October 9, 1974; B-197132, Jan. 22, 1980. Nonetheless, in this case we concluded that the fuel transfers could have been

considered to rise to the level of a "substantial violation." Under section 3(c)(1)(A) of the AECA, violations may be substantial "either in terms of the quantities or in terms of the gravity of the consequences regardless of the quantities involved." During the pertinent time period, various provisions of law, typically known as the "Boland Amendments," restricted the use of appropriated funds "either directly or indirectly" to provide assistance to the Resistance. See, e.g., Pub. L. No. 99-83 § 722(d), 99 Stat. 190, 254 (1985). See generally Part III. Accordingly, even had the Salvadoran government requested U.S. consent for the transfers, it is our view that such consent could not have been granted because it would have been inconsistent with the prohibition on providing indirect assistance to the Contras. Further, we note that section 3(a)(2) of the AECA provides that in considering a request for approval of any transfer, the President shall not give his consent "unless the United States itself would transfer the defense article under consideration to that country." We note in this connection that the U.S. Government would have been prohibited from transferring fuel directly to the Contra resupply operation by the Boland Amendment. Pub. L. No. 99-83, § 722(d), 99 Stat. 190, 254, August 8, 1985; Pub. L. No. 99-169, § 105, 99 Stat. 1002, 1003, December 4, 1985; Pub. L. No. 99-190, § 101(b), 99 Stat. 1185, 1211, December 19, 1985 (§ 8050).

Finally, the position that the violation was "substantial" would be further reinforced by the fact that it occurred during a period of intense Congressional and public interest in assistance to the Contras, featuring special committee hearings, criminal indictments, and intense media coverage. Although the quantities of the fuel transferred may be viewed as moderate, it is clear that the recipients of the fuel transfers were highly controversial and that the transfers took place in circumstances clearly out of the ordinary.

As mentioned above, the Department of State has since determined that the transfers did not constitute a substantial violation, and the recommendation that a determination be made as to whether a substantial violation may have occurred has been dropped.

Reporting under Section 3(e). Whether or not the transfers amounted to a "substantial" violation of the FMS agreement, requiring a report under section 3(c)(2), the President clearly was required to report them to Congress under section 3(e) as "transfer[s] . . . made without his consent." DOD and State informally have concurred in this conclusion.

Penalties. Section 3(c)(1)(A) of the AECA provides for suspension of credits and guarantees for an FMS recipient that violates its sales agreement by an unauthorized third party transfer. A report under section 3(c)(2), however, is not enough to invoke the penalties set forth in section 3(c)(1). Either the President or Congress must take the further step of making a determination under section 3(c)(3) that there has been, not "may have been," a violation and

that a penalty should be imposed. Imposition of the penalty, therefore, is discretionary. In B-197132, January 2, 1980, after discussing apparent violations by Israel and Turkey, we concluded:

"The Lebanon and Cyprus situations indicated that limitations of the use of U.S.-supplied arms cannot be viewed in isolation but as part of the overall foreign policy of the United States. The President and the State Department's view of what constitutes "legitimate self-defense" in a particular case is influenced by what they consider to be the best interests of this Nation.

Under current law, while the President is required to report to the Congress that the use of U.S. arms may not have been for self-defense or internal security purposes, he has the discretion to make a determination of improper use or no determination at all. Similarly, the Congress, subsequent to the President's report of a possible violation, may but is not required to make a determination which under Section 2753 [section 3] would render the offending nation ineligible for military assistance." (Emphasis in original.)

Accordingly, we are unable to conclude, as a matter of law, that the penalties of section 3(c)(1) should have been invoked in the case at hand.

As indicated above, penalties for substantial violations of FMS agreements by unauthorized third party transfers are governed by section 3(c)(1)(A) of the AECA, which provides for termination of credits and guarantees to violators. Because El Salvador currently does not receive credits or guarantees, imposition of this penalty would not be effective in the circumstances here under review. We note that section 3(c)(1)(B) of the AECA provides for termination of cash sales for certain violations of an FMS agreement, but that section does not appear to be applicable to violations resulting from unauthorized third party transfers.

C. Transfer to other third parties. As indicated above, NSIAD auditors have learned that the Salvadorans occasionally permitted other foreign aircraft to refuel at Ilopango with FMS-procured fuel.

Although these "transfers" probably are not the sort of transfers the Congress contemplated when it required reports under sections 3(c)(2) and 3(e), they do constitute technical violations of the FMS agreement. We conclude therefore, and the Departments of Defense and State have conceded, that a report should be made under section 3(e).

Nonetheless, we cannot conclude that a report of these transfers should be made under section 3(c)(2). Even if these transfers did amount to violations of the pertinent FMS agreement, they clearly were not "substantial" violations, and therefore the reporting and penalty provisions of section 3(c) of the AECA do not apply.



D. Sale of fuel to American military aircrews. U.S. military aircraft have been permitted to refuel at Ilopango with FMS-procured fuel. The Defense and State Departments informally have taken the position that this does not present a third-party transfer problem because the U.S. is not a third party. We concur in this conclusion.

We note, however, that the FMS agreement restricts transfers not to "third parties," but rather to "anyone not an officer, employee or agent of the Purchaser." Section 3(c) of the AECA uses similar language. Nonetheless, both the Congress and the Executive branch in the past have used the term "third parties" interchangeably with this language. See, e.g., Pub. L. No. 96-533, 94 Stat. 3131, § 101(a)(1) (1980) (amending section 3(d) of the AECA); H.R. Doc. 272, 96th Cong., 2d Sess. 23 (1980); Cong. Rec. H243-44 (daily ed. Feb. 3, 1986). We conclude, accordingly, that this technical distinction should not be determinative in the instant case.

NSIAD could, however, recommend that DSAA amend DD Form 1513 specifically to permit transfers of FMS-procured materiel to the United States without formal U.S. consent.

E. Sale of fuel to MAC and NHAO commercial contract aircraft without consent. Commercial aircraft under contract to the Military Airlift Command and the Nicaraguan Humanitarian Assistance Office also refueled at Ilopango with FMS-procured fuel. This presents a more difficult case than the refueling of U.S. military aircraft. Nonetheless, DOD has taken the position that these commercial aircraft, while under contract to the U.S., did not constitute third parties such that the FMS agreement was violated. We conclude that the DSAA position is reasonable. This procedure reportedly has been permitted under longstanding administrative practice. Again, NSIAD could recommend the DSAA amend DD Form 1513 to permit these transfers.

F. Disposition of funds received by the Salvadorans from the sale of the fuel. As indicated above, the Salvadoran military received a quantity of cash from the sale of MAP-funded, FMS-procured fuel to the Resistance resupply aircrews and U.S. aircraft. The question has been raised as to whether the Salvadoran military was legally entitled to keep the proceeds of these sales for its own use.

As noted above, the legal relationship between the U.S. and El Salvador concerning the FMS-procured fuel is governed wholly by the FMS agreement, not the FAA or the AECA. Accordingly, because the standard FMS agreement, DD Form 1513, does not provide for U.S. reversionary rights, the Salvadoran military was entitled legally to keep the sale proceeds for its own use.

This conclusion prompts the question of whether or not DD Form 1513 should provide for U.S. reversionary rights. The General Counsel of DSAA has taken the position that neither the FAA nor the AECA requires that the U.S. retain reversionary rights over MAP-funded, FMS-procured materiel, and therefore that DD Form 1513 need not provide for U.S. reversionary rights. We agree.

The Foreign Assistance Act (FAA), which governs the Military Assistance Program, does provide in section 505(f) for U.S. reversionary rights to the "net proceeds of sale" received by countries transferring materiel acquired under the MAP program. The Arms Export Control Act, which governs the FMS program, does not provide for U.S. reversionary rights. DSAA contends that once MAP funds are transferred to a country's FMS account pursuant to section 503(c) of the FAA, (so-called "MAP Merger"), the funds are subject to the AECA and the restrictions and requirements of the FAA are no longer applicable. DSAA's position is reflected in the Security Assistance Management Manual (SAMM), DOD Directive 5105.38-M, October 1, 1988, which provides that materiel "acquired with [merged-MAP] funds are indistinguishable from other FMS acquisitions and thus are treated identically." SAMM § 20102C. Therefore, "Reversionary title rights will not accrue to the U.S. on any defense article sold under FMS procedures even when merged funds may have been used to finance the purchase in whole or in part." SAMM § 110001A5.

We have held in the past that FMS requirements and procedures are applicable to FMS procurements funded with MAP-merger funds. B-226067-O.M., April 6, 1987; B-214676, Sept. 18, 1984. Further, DSAA has a longstanding administrative practice of applying FMS requirements and procedures to MAP-funded FMS procurements. None of the current MAP-funded FMS agreements provide for U.S. reversionary rights.

Accordingly, we conclude that the Salvadoran military was entitled legally to keep the sale proceeds for its own use and DSAA was under no legal obligation to provide for U.S. reversionary rights in DD Form 1513. Nonetheless, this probably creates a situation not intended by Congress when the MAP and FMS programs were authorized. NSIAD could recommend that Congress amend the AECA to require U.S. reversionary rights or that DSAA amend its standard FMS agreement to provide for U.S. reversionary rights or both.

### III. LEGAL ISSUES: BOLAND AMENDMENT

A. The Law. The Boland Amendment, like any restriction on the use of appropriated funds, does not directly prohibit particular conduct, but rather prohibits obligating or expending particular appropriated funds in a proscribed manner. Accordingly, a conclusion that the Boland Amendment has been violated requires a finding that appropriated funds were obligated or expended to provide assistance to the Nicaraguan Resistance, and that expenditure or obligation was not specifically authorized by statute.

The fiscal year 1986-87 Foreign Assistance Authorization Act, the "International Security and Development Cooperation Act of 1985," Pub. L. No. 99-83, 99 Stat. 190, 254, Aug. 8, 1985, authorized MAP funds for fiscal year 1986 as well as \$27 million in humanitarian assistance to the Resistance. Section 722(d) provided:

"Prohibition Relating to Military or Paramilitary Operations in Nicaragua.-- Notwithstanding any other provision of law, no funds authorized to be

appropriated or otherwise made available by this Act (except funds authorized to be appropriated in this section), by the Foreign Assistance Act of 1961, or by the Arms Export Control Act shall be used to provide assistance of any kind, either directly or indirectly, to any person or group engaging in an insurgency or other act of rebellion against the Government of Nicaragua. The United States shall not enter into any arrangement conditioning, expressly or impliedly, the provision of assistance under this Act or the purchase of defense articles and services under the Arms Export Control Act upon the provision of assistance by a recipient to persons or groups engaging in an insurgency or other act of rebellion against the Government of Nicaragua."

The subsequent appropriation made no change in this prohibition. The Conference Report on the Act explained section 722(d) as follows:

"The purpose of the second sentence of this section is to prohibit the United States from furnishing economic or military assistance or selling U.S. military equipment on the condition, either expressly or impliedly, that the recipient or purchaser provide assistance to insurgents involved in the struggle in Nicaragua. This section does not prohibit U.S. Government officials from discussing U.S. policy in Central America with recipients of U.S. assistance or purchasers of U.S. military equipment. Nor does it prohibit recipients of U.S. assistance from furnishing assistance to any third party on their own volition and from their own resources."

H.R. Rep. No. 327, 99th Cong., 1st Sess. 143 (1985).

B. Transfer of MAP-funded, FMS-procured fuel by the Salvadorans to Resistance resupply aircrews. We conclude that the Salvadoran sale of fuel to the Resistance resupply aircrews did not violate the Boland Amendment. The Government of El Salvador is not subject to U.S. law and therefore cannot violate the Boland Amendment. The legislative history of the pertinent provisions indicates clearly that the Amendment does not "prohibit recipients of U.S. assistance from furnishing assistance to any third party on their own volition and from their own resources." H.R. Rep. No. 327, 99th Cong., 1st Sess. 143 (1985). Under the FMS sales agreement, once materiel is transferred to an FMS recipient, title transfers to the recipient and the materiel is no longer U.S. property. The fuel transfer by the Salvadorans, therefore, did not constitute the obligation or expenditure of appropriated funds necessary to violate the Boland Amendment.

A different conclusion might be reached if there were evidence that the MAP-funded fuel was provided to El Salvador with the understanding that it would be supplied to the Resistance resupply crews. There is, however, no such evidence in the case at hand.

## DIGESTS

1. Although El Salvador transferred fuel acquired through the Foreign Military Sales (FMS) program to Nicaraguan Resistance resupply aircrews without the consent of the President, they did not violate the Arms Export Control Act. The legal relationship between the U.S. and El Salvador regarding the fuel is governed wholly by the FMS agreement.

2. Section 3(c)(2) of the Arms Export Control Act, 22 U.S.C. § 2753(c)(2), requires a report by the President to Congress upon receipt of information that a violation "described in paragraph 1" may have occurred. "Paragraph 1" refers to section 3(c)(1), which describes transfers "in substantial violation" of the pertinent agreement. Accordingly, the President under section 3(C)(2) must report only when "substantial" violations may have occurred.

3. Transfers of fuel acquired under the Foreign Military Sales (FMS) program by the Salvadoran military to Nicaraguan Resistance resupply aircrews should be deemed to constitute a "substantial violation" of the pertinent FMS agreement under section 3(c) of the Arms Export Control Act, 22 U.S.C. § 2753(c). The fuel went to an entity for which direct U.S. aid was forbidden by statute and the transfers took place during a period of intense controversy concerning assistance to the Resistance.

4. Section 3(c)(1) of the Arms Export Control Act, 22 U.S.C. 2753(c)(1), provides for suspension of credits for Foreign Military Sales recipients which violate their sales



agreement by an unauthorized third party transfer. A report under section 3(c)(2), however, is not enough to invoke the penalty set forth in section 3(c)(1). Either the President or Congress must take the further step of making a determination under section 3(c)(3) that there has been, not "may have been," a violation and that a penalty should be imposed.

5. Although U.S. military aircraft and commercial aircraft under contract to the United States have been permitted to refuel in El Salvador with fuel procured by El Salvador under the Foreign Military Sales (FMS) program, this does not constitute a third-party transfer violation of the pertinent FMS agreement because the U.S. is not a third party.

6. Although the Salvadoran military received a quantity of cash from the sale of fuel transferred to El Salvador under the Foreign Military Sales (FMS) program, the Salvadoran military was legally entitled to keep the proceeds of these sales for its own use. The legal relationship between the U.S. and El Salvador concerning the fuel is governed wholly by the FMS agreement. Accordingly, because the standard FMS agreement does not provide for U.S. reversionary rights, the Salvadoran military was entitled legally to keep the sale proceeds for its own use.

7. A conclusion that the Boland Amendment has been violated requires a finding that appropriated funds were obligated or expended to provide assistance to the Nicaraguan Resistance, and that that expenditure or obligation was not specifically authorized by statute.

8. Salvadoran sale of fuel acquired under the Foreign Military Sales program to Nicaraguan Resistance resupply aircrews did not violate the Boland Amendment. The Government of El Salvador is not subject to U.S. law and therefore cannot violate the Boland Amendment. The legislative history of the pertinent provisions indicates clearly that the Amendment does not prohibit recipients of U.S. assistance from furnishing assistance to any third party on their own volition and from their own resources.

#### QUESTIONS SUBMITTED BY SENATOR ROBERT W. KASTEN

- 1.Q. On Page 15 of the hearing transcript, you state that GAO believes, "the transfer of fuel to the Contra supply operation may have also constituted a substantial violation" within the meaning of the Arms Export Control Act. My reading of that Act indicates that the question of whether there may have been a substantial violation is subject completely to the interpretation of the executive branch or Congress, and that there really are no standards in the law to make a judgement one way or the other.

Upon what do you base your opinion, and why is GAO making such a judgement?

- A. See answer to question 2 on pages 2-3.

- 2.Q. Again on the subject of a "substantial violation", I refer to pages 60 and 61 of the transcript. You answered a question from Senator Harkin about your conclusion that it was a substantial violation by saying that, "the fact that the fiscal year 1986-87 foreign assistance authorization act prohibited the use of any MAP funds from being used for military or paramilitary activities associated with the Contra operation at the time, we felt was a significant indication of the sense of Congress, and that it was so clear that any use of those funds in support of military operations of the Contra organization, without regard to the amount, may very well constitute a substantial violation".

What does this have to do with the provisions of the Arms Export Control Act, and again, why is the General Accounting Office making such judgments?

Do you have any legal opinions from which you are making these judgments?

- A. See answer to question 2 on pages 2-3. Also, we are providing a copy of an internal memorandum documenting legal advice provided by our Office of General Counsel to the audit staff during preparation of the draft report and testimony.
- 3.Q. Is it true that the GAO found no evidence that General Bustillo personally pocketed any of the funds received from Salvadoran sales of any fuel procured from the U.S. Government?

- A. We found no evidence that General Bustillo personally pocketed any of the funds received from sales of MAP-funded fuel to the Contra supply operation and U.S. government. We do not know whether the transfers of fuel to private and foreign government parties involved a sale because General Bustillo would not discuss specific details. During our trip to El Salvador in December 1988, General Bustillo stated that he used proceeds from the sale of MAP-funded fuel to refuel U.S. military aircraft to pay for operational expenses of the Salvadoran Air Force. However, he would not discuss any aspect of the Contra supply operation, including the use of sale proceeds.
- 4.Q. Is it true that the GAO received information that Salvadoran sale proceeds were spent on official Salvadoran Air Force requirements?
- A. On page 12 of my statement, I stated that the Salvadoran Air Force Commander told us he used proceeds from the sale of MAP-funded fuel to refuel U.S. military aircraft to pay for operational expenses of the Salvadoran Air Force. I also stated that the U.S. official serving as Military Group commander during 1987 told us that he reviewed Salvadoran Air Force expenditure records in April 1987 and found them to show that proceeds had been spent for construction of facilities, spare parts and other defense-related requirements. He did not verify the accuracy of the records. We have received no other information on the use of sale proceeds.
- 5.Q. Is it true that General Bustillo offered to let the GAO auditors examine the Salvadoran Air Force records of fuel receipts and sales to U.S. Government aircraft and to aircraft chartered by the U.S. Government, and use by Salvadoran aircraft, but that the GAO auditors decided not to take General Bustillo up on his offer? If so, why?
- A. During our trip to El Salvador in December 1988, General Bustillo stated that he would provide information to us on the use of MAP-funded fuel by U.S. military aircraft and Salvadoran Air Force aircraft, but not on any other use of MAP-funded fuel. Because we had already confirmed the transfer of MAP-funded fuel to the Contra supply operation and had obtained copies of U.S. Military Group records of fuel sales to refuel U.S. military aircraft, we did not need to review Salvadoran Air Force records.
- 6.Q. I understand that GAO relied on the records kept by Felix Rodriguez that he presented to the Iran-Contra Select Committees and that the Executive Branch did not have access to these records of the Committees. Is it true that the GAO repeatedly refused requests of the Executive Branch in the December 1988 - February 1989 period for copies of these records so that it could not corroborate and verify them? If so, why?
- A. We relied on a variety of information including the records provided by Felix Rodriguez to the Select Committees. These records included receipts for fuel purchases by the Contra supply air crews at Ilopango. Department of State and Department of Defense (DOD) officials involved in investigating alleged transfers of MAP-funded aviation gas to the Contra supply operation told us that they never asked the Committee for the records provided by Rodriguez. Therefore, it is not certain that the Executive Branch did not have access to these records.

We briefed State and DOD officials in January 1989 as soon as we had confirmed the transfer of MAP-funded aviation gas to the Contra supply operation and again in February 1989, as soon as we confirmed the transfer of MAP-funded commercial jet fuel. The information we provided consisted of the months in which transfers occurred and approximate quantities of fuel involved. As soon as we completed our calculations, we provided specific dates and quantities to State and Defense Department officials.

In January 1989, a DOD official requested copies of the Rodriguez records containing information on purchases of aviation gas at Ilopango. We explained that because these records belong to the Select Committee, we did not have the authority to release copies. However, we allowed the official to review the records and obtain data on specific dates of refuelings involving MAP-funded fuel and quantities of fuel purchased. In February 1989, we received records from Southern Air Transport on purchases of MAP-funded commercial jet fuel by the Contra supply operation. We also allowed the official to review these records. Given these facts, we believe the Executive Branch had the information required, beginning in January 1989, to corroborate and verify the transfers.

7.Q. Is it your understanding from your conversations with former U.S. Military Group personnel that they were under the impression that fuel procured directly from private suppliers using Salvadoran national funds was continuously available at Ilopango Air Base during the time period in question, that it was that fuel which was being sold by the Salvadoran Air Force, and that sales of such fuel would not violate any Salvadoran agreements with the U.S. Government or U.S. law?

A. We interviewed the former Military Group commander and Military Group Air Force Section chief who were assigned to El Salvador during the time of the Contra supply operation. Both individuals stated that they did not know that the Salvadoran Air Force tanks contained only MAP-funded fuel. The former Military Group commander stated that he was under the impression that the Salvadoran government continued to purchase fuel with national defense funds after the U.S. government began supplying MAP-funded fuel. The former Air Force Section Chief stated that he did not know whether MAP funds were the only source of funding for the fuel contained in the tanks. Both officials stated that the possibility that the fuel sold to the Contra supply operation was MAP-funded did not occur to them.

8.Q. Did the U.S. Military Group have the resources to provide continuous oversight of fuel-dispensing operations at Ilopango Air Base during this period?

A. According to former U.S. Military Group officials, they did not have the resources to provide continuous oversight of Salvadoran Air Force use of MAP-funded items, including fuel, at the time of the Contra supply operation.

9.Q. Isn't it true that it would have been difficult for personnel at Ilopango Air Base to have recognized that some unauthorized third-party transfers were occurring, when the same L-100 aircraft (tail number N521SJ) was used to fly 8 out of 9 legitimate NHAO resupply flights and 4 out of 8 Contra-funded missions during the single period from March 5, 1986 through April 21, 1986?

A. According to former Military Group officials, they were aware that aircraft involved in the Contra supply operation



refueled on the Salvadoran Air Force side of Ilopango Air Base during 1986.

10.Q. Is it GAO's view that General Bustillo had no reasonable basis to believe the Salvadoran fuel sales had the consent and enthusiastic cooperation of the U.S. Government consistent with U.S.-Salvadoran FMS agreements?

A. DOD and embassy officials were aware that the Salvadoran Air Force was selling fuel to refuel U.S. military aircraft. In fact, the embassy issued U.S. Treasury checks to reimburse the Salvadoran Air Force for the fuel sold. Therefore, we believe that General Bustillo had a reasonable basis to believe these sales had the consent of the U.S. government. We do not know whether he had a reasonable basis to believe sales to refuel U.S. government contract aircraft had U.S. consent because DOD and embassy officials told us that they did not know about these sales. As stated on page 10 of my statement, we agree with State and DOD that transfers of fuel to refuel U.S. military and contract aircraft are not third-party transfers. Thus, we do not believe these transfers violated any FMS sales agreement.

We are unable to comment on whether General Bustillo had a reasonable basis to believe the fuel sales to the Contra supply operation had the consent and cooperation of the U.S. government consistent with FMS sales agreements because he would not discuss the supply operation, including whether or not he believed it was an official U.S. government activity. However, we note that the former U.S. Military Group commander told us that he emphasized to General Bustillo that no MAP items could be transferred to the Contras. We also do not know whether General Bustillo believed that the transfers to other third parties were acceptable because he would not discuss specific details.

11.Q. You say on page 4 of your statement that the Salvadoran "Commander said that Salvadoran national security interests prevented him from discussing" any aspect of the Contra supply operation. I understand that his Government refuses to acknowledge any such participation. Was General Bustillo fully cooperative with the GAO investigation other than in explicitly or implicitly confirming Salvadoran support for the Contra supply operation?

A. General Bustillo also would not provide specific details on the transfer of fuel to private and foreign government pilots or discuss the sale of MAP-funded fuel to refuel U.S. government contract aircraft. He stated that he would only provide information on the use of MAP-funded fuel by Salvadoran and U.S. military aircraft.

12.Q. Did DSAA revise the payment procedures for sales proceeds for fuel sales to U.S. Government aircraft prior to the GAO investigation? Prior to the testimony of Felix Rodriguez before the Iran-Contra Select Committees?

A. DSAA revised the payment procedure for sale proceeds for MAP-funded fuel sales to U.S. military aircraft in April 1987. According to DSAA officials, they were not aware then that Southern Air Transport pilots on U.S. government contract flights paid cash to the Salvadoran Air Force directly. Therefore, the revised payment procedure did not apply to these payments. These payments continued until we informed DOD about them in January 1989. The revised procedures took effect before our investigation and before the testimony of Felix Rodriguez.

13.Q. Did the Contra supply operation get fuel at a cut-rate or subsidized price from the Government of El Salvador? Could that operation have purchased fuel at Ilopango Air Base from a private commercial source at comparable prices instead of from the Government of El Salvador?

A. The Contra supply operation paid the Salvadoran Air Force more for MAP-funded fuel than the U.S. government paid Exxon to supply the fuel. Specifically, the Salvadoran Air Force charged \$2.00 per gallon for MAP-funded aviation gas and \$1.65 per gallon for MAP-funded commercial jet fuel. The U.S. government contracted with Exxon to supply aviation gas and commercial jet fuel at a cost of about \$1.50 per gallon. We did not explore whether the supply operation could have purchased fuel from the civilian side of Ilopango at comparable prices.

14.Q. I understand that you misspoke during your testimony concerning title to Old Military Assistance Program (MAP) defense articles. Isn't it true that legal title to grant defense articles pass from the U.S. Government to the recipient foreign government, whether they are granted under Old MAP or they are sold under current MAP Merger financing procedures? What is the legal difference -- other than the matter of legal title -- between Old MAP grants and Old MAP loans of such articles under section 503(a)(1) of the Foreign Assistance Act of 1961?

A. According to DOD, legal title to grant defense articles passes from the U.S. government to the recipient foreign government at the time of transfer under both the "old MAP" and current MAP-merger procedures. We did not review old MAP procedures during our review of fuel transfers in El Salvador because the fuel was funded under current MAP merger financing procedures.

15.Q. Since the President or the Congress, acting by joint resolution, is given the function of determining whether a "substantial violation" occurred within the meaning of section 3(c)(3) of the Arms Export Control Act (AECA) and section 505(d)(2)(A) of the Foreign Assistance Act of 1961 (FAA), can the GAO properly express an authoritative opinion on this issue? Isn't it really a political rather than a legal issue? Under executive orders the Secretary of State is delegated the function of reporting on behalf of the President pursuant to section 3(c)(2) AECA and section 505(d)(2)(R) FAA that such a violation "may have occurred." Is the GAO saying that the Secretary of State would violate his duty if he failed to report to the Congress under those statutory provisions even though the President does not decide that such a violation "may have occurred?" In that event, is the GAO saying that the President would have violated his statutory duty?

A. See answer to question 2 on pages 2-3. Also, we do not believe that the Secretary of State or the President failed to carry out any statutory duty or otherwise violated any law. Our draft report recommended that the Secretary determine whether a substantial violation may have occurred and if so, report the matter to the Congress. In its response, State reported that it had concluded that a substantial violation did not occur. Since this in effect represented the determination, we are deleting the recommendation from our final report. In our view, the Secretary has carried out his statutory duty.

16.Q. I understand that the view was expressed during the hearing that the Salvadoran cash receipts from fuel sales to U.S.

Government military aircraft do not belong to the Government of El Salvador and should not have been paid in the first place by such aircraft. It was further stated that the U.S. Government "paid twice:" first under the MAP program for the fuel and second for the fuel our aircraft received. I understand that the GAO has concluded that the cash receipts do, however, belong to the Government of El Salvador legally. Do you agree, therefore, that if the U.S. Government military aircraft did not pay for the fuel, they would thereby have received a windfall that would have been tantamount to an unlawful augmentation of DOD funds for aircraft operations and maintenance at the expense of foreign aid funds? Would acquisition of such fuel without charge by DOD also constitute a circumvention of government procurement laws and regulations, or does the AECA contain its own independent procurement authorization in such circumstances?

- A. We have concurred with DOD that title to the cash receipts remains with the Government of El Salvador and that there is no provision for return of those receipts to the United States in the 1986 FMS sales agreement.

We do not question the legality of the purchase of MAP-funded fuel by U.S. military and contract personnel. The Arms Export Control Act does not provide independent authority for procurement by the DOD. Our work did not address the question of whether acceptance of fuel without charge by DOD would have constituted an impermissible augmentation of appropriations or circumvention of procurement laws and regulations. Thus, we are not in a position to offer an opinion at this time.

- 17.D. Does the GAO agree with the attached legal opinion, dated January 17, 1989, of the General Counsel for the Defense Security Assistance Agency and addressed to the GAO Office of General Counsel that the U.S. Government does not retain legal title or reversionary rights to the fuel provided under MAP-financed FMS agreements and that the U.S. Government now has no right to obtain the net proceeds of any sales of the fuel made by the Government of El Salvador to third-parties? Would the GAO agree that any offer by the Government of El Salvador to pay the U.S. Government these proceeds now or to credit the latter with "free fuel" for U.S. Government aircraft in the future would neither discharge any Salvadoran legal obligation nor mitigate any violation of the FMS agreements?

- A. GAO agrees in principle with the position of DOD, set forth in detail in the January 17, 1989 memorandum by the General Counsel of the Defense Security Assistance Agency, that the U.S. does not retain legal title or reversionary rights to the fuel provided under MAP-funded FMS agreements and that the U.S. does not have a legal basis to obtain the net proceeds of any sales of the fuel made by El Salvador to third parties.

We are not aware of any obligation of the Salvadoran government to pay back the proceeds of the fuel sales. The 1986 FMS agreement was violated by the unauthorized transfer of the fuel to third parties, not by the retention by the Salvadoran government of the sale proceeds. It is not clear, therefore, how such an offer to pay would "mitigate" the violation of the 1986 FMS agreement.

## QUESTIONS SUBMITTED BY SENATOR DON NICKLES

- 1.Q. The GAO report states that the transfer of fuel to the Contra supply operation "may have constituted a substantial violation" of the Arms Export Control Act. A violation may be judged "substantial" based either on quantity or the gravity of the consequences.

Does the law state specific objective criteria by which a violation may be judged "substantial"? In other words does the law define either "substantial" or "gravity of the consequences" in a measurably objective manner?

- A. Section 3(c)(1)(A) of the Arms Export Control Act provides that violations may be substantial "either in terms of the quantities or in terms of the gravity of the consequences regardless of the quantities involved." Beyond this statutory detail, we are not aware of further criteria in the law defining the terms "substantial" or "gravity of the consequences."
- 2.Q. If the law does not state a specific objective definition of "substantial" has the GAO relied on the legal precedents of past 3(c)(2) findings to suggest that this particular violation may have also been substantial?
- A. We discussed the violation with State officials responsible for advising the Secretary on the seriousness of violations involving unauthorized third-party transfers. As we understand it, violations are reviewed on a case-by-case basis and no precedent for defining what constitutes a substantial violation has been established.
- 3.Q. Has the GAO's legal counsel made a legal analysis that the violation is "substantial"? If so, please provide a copy of the legal opinion for the record. If no legal analysis has been performed on the question of whether the violation is "substantial", please explain why the GAO believes that the transfer of fuel may have constituted a substantial violation. In other words why is it legally significant that the violation occurred at a time when the U.S. was prohibited by law from supporting the contras?
- A. Section 3 of the Arms Export Control Act states that a violation involving an unauthorized third-party transfer may be substantial "either in terms of the quantities or in terms of the gravity of the consequences regardless of the quantities involved." We believe the fact that the transfer occurred when the U.S. government was prohibited by the International Development and Security Cooperation Act of 1985 from using military assistance funds, directly or indirectly, to support Contra military or paramilitary operations and by other legislation, cited on page 3, from using any funds to support Contra military or paramilitary operations except to provide intelligence support increased the gravity of the consequences of the transfer, and thus is legally significant. Also see answer to question 2 on pages 2-3.
- As requested, we are providing a copy of an internal memorandum documenting legal advice provided by our Office of General Counsel to the audit staff during preparation of the draft report and testimony.



- 4.Q. If the judgement as to whether a violation is "substantial" is essentially subjective, please explain why the GAO is suggesting that the violation may have been substantial. In the answer please explain why the GAO is making subjective value judgments.
- A. See answer to question 2 on pages 2-3. Also, we do not believe that presenting our views on the violation of the 1986 FMS sales agreement exceeds this mandate. Again, I would like to note that we did not make a determination, but rather offered an advisory opinion.

#### CONCLUSION OF HEARING

Senator LEAHY. Thank you.

This will conclude the hearing. The subcommittee will stand in recess.

[Whereupon, at 3:50 p.m., Thursday, June 8, the hearing was concluded and the subcommittee was recessed, to reconvene at the call of the Chair.]

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